TEXAS REGISTER

Volume 31 Number 33 *August 18, 2006* *Pages 6429-6552*

Samuel Muegge

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams

Director - Dan Procter

Staff
Ada Aulet
Leti Benavides
Dana Blanton
Belinda Bostick
Kris Hogan
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Tamara Wah

IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Opinions

Opinion No. GA-0446

The Honorable Beverly Woolley

Chair, Committee on Calendars

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

The Honorable John Smithee

Chair, Committee on Insurance

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Shirley J. Neeley, Ed.D

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Conflict of interest disclosure requirements for local government officers and persons who contract with local governmental entities (RQ-0451-GA)

S U M M A R Y

As used in chapter 176 of the Local Government Code, the threshold phrase "contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity" encompasses one who agrees to, makes, or arranges for, or inquires for, asks for or requests from a local governmental entity a promise creating legal obligations concerning the sale or purchase of property, real or personal, and any goods and services.

A "business relationship" is a connection between two or more parties based on a commercial activity of one of the parties. An "affiliation" is an association between persons or between a person and an organization outside of a "business relationship." Whether an affiliation exists is a fact question. Pursuant to the term "business relationship" and "affiliation," a personal or business interest bearing savings account or loan which generated taxable income to either the person subject to chapter 176 or the local government officer would fall within the scope of chapter 176.

Chapter 176 includes professional services contracts.

Documents filed with the local governmental entity should be retained in accordance with the local governmental entity's records retention schedule. A local governmental entity should create a retention policy for documents maintained on the entity's website.

Partnerships, corporations and other corporate bodies are "persons" subject to chapter 176. As applied to a corporate or legal entity, chapter 176.002's disclosure requirements apply to only the legal entity that is the "person" contracting or seeking to contract with the local governmental entity. Third-party individuals who act as agents under agency law for a legal entity contracting or seeking to contract with the local governmental entity are independently subject to chapter 176 under section 176.002(a)(2).

To the extent a vendor merely adopts the list of the various entities and relationships provided by the local governmental entity, the vendor does not "describe" the required relationships and affiliations and therefore does not comply with chapter 176. Similarly, to the extent a vendor adopts an incomplete list of the various entities and relationships provided by the local governmental entity, the vendor does not "identify" and "describe" all relevant relationships and affiliations and therefore does not comply with chapter 176.

A local governmental entity does not have an affirmative duty to require vendors to comply with chapter 176. Nor does a local governmental entity have an affirmative responsibility to enforce chapter 176, or even to notify vendors of its requirements. A contract between a local governmental entity and a vendor who fails to comply with chapter 176 is not void. However, local governmental entities may choose to impose such a requirement on all its vendors and to provide for the voidability of a contract entered into in violation of chapter 176.

A vendor must file a conflict of interest questionnaire even if the vendor has no business relationships or affiliations to disclose. Local governmental entities must post such a questionnaire on its website.

Vendors with existing contracts with local governmental entities are not required to file a conflict of interest questionnaire.

Chapter 176 does not apply to open-enrollment charter schools or regional education service centers.

Chapter 176's disclosure requirements apply even when the vendor is a family member of a local government officer.

The reporting requirements of chapter 176 are triggered upon receipt of more than $250 in gifts by the local government officer and the officer's family as individuals rather than as a family unit.

A vendor who provides goods or services at a reduced price to a local governmental entity is subject to chapter 176 by its plain terms and must comply with its disclosure requirements. A related local government officer must also comply with chapter 176's disclosure requirements if disclosure is required by §176.003.

Whether the identity of a vendor who is also a client of an attorney who is a local government officer may be withheld from disclosure under chapter 176 pursuant to an exception to the attorney-client privilege is a fact question and inappropriate for the opinion process.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200604092
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: August 8, 2006

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §§81.11, 81.13 - 81.24, 81.27, 81.29

The Office of the Secretary of State proposes amendments to §§81.11, 81.13 - 81.24, 81.27, and 81.29 concerning disbursement of funds under the Texas Election Code, Chapter 19. These amendments will allow for a more efficient operation of the Chapter 19 fund for both the county voter registrar and the Office of the Secretary of State. These rules designate which goods and services are reimbursable with Chapter 19 funds and outline procedures to be followed by county voter registrars to obtain such reimbursement.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. McGeehan has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be a better use of the Chapter 19 funds and a more efficient reimbursement processing procedure. There will be no effect on small businesses. There is no anticipated economic cost to the voter registrars.

Comments on the proposed amendments may be submitted not later than 12 noon, Friday, September 15, 2006, to the Office of the Secretary of State, Shelia Latting, Manager of Elections Funds Management, P.O. Box 12060, Austin, Texas 78711.

The amendments are proposed under the Texas Election Code, §31.003 and §19.002(b), which provides the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code.

The Texas Election Code, Chapter 19, §19.002(b) is affected by the proposed amendments.

§81.11. Definitions.

The following words and terms, when used herein, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The Office of the Secretary of State

(2) Chapter 19--Texas Election Code Annotated, Chapter 19 (Vernon 2003 [~~1986~~] and Supplement 2004-2005 [~~1995~~]).

(3) Chapter 19 funds--Funding available to a county voter registrar pursuant to Texas Election Code Annotated, §19.002 (Vernon 2003 [~~1986~~] and Supplement 2004-2005 [~~1995~~]).

(4) HAVA (Help America Vote Act)--42 U.S.C. §15301, Texas Election Code Annotated, §31.010, §19.004(d) (Vernon 2003).

(5) [~~(4)~~] Mileage Guide--Electronic Official State Mileage Guide adopted by the [~~State~~] Comptroller of Public Accounts.

(6) [~~(5)~~] NVRA (National Voter Registration Act)--42 U.S.C. §1973 et seq., Texas Election Code Annotated, §19.004, §31.007 (Vernon 2003) [~~House Bill 127, Chapter 797, 74th Legislature, 1995~~].

(7) [~~(6)~~] Rule--A rule adopted under Chapter 81 of the Texas Administrative Code.

(8) [~~(7)~~] Section--A section of Texas Election Code Annotated (Vernon 2003 [~~1986~~] and Supplemental 2004-2005 [~~1995~~]).

(9) [~~(8)~~] Travel Guide--State of Texas Travel Allowance Guide issued by the [~~Texas State~~] Comptroller of Public Accounts.

§81.13. Allowable Uses of Chapter 19 Funds.

Chapter 19 funds which must comply with the criteria of "reasonable and necessary", as established by Uniform Grant Management Standards (UGMS) may be used to pay for activity [~~any item or service~~] designed to increase the number of registered voters in the state, maintain and report an accurate list of the number of registered voters, and/or increase the efficiency of the voter registration office through the use of technological equipment. All Chapter 19 funding requests submitted to the Agency must state which of these purposes the requested item(s) [~~or service(s)~~] will further. If there is a question regarding whether an item or service is payable from Chapter 19 funds, a written request should be submitted to the Agency detailing the estimated cost, projected payment date, purpose of item or service[~~,~~] and how it relates to the aforesaid purposes. The Agency will respond to this request in writing within 14 business days.

§81.14. Normal Day-To-Day Operation--Defined.

Consistent with the intent of §81.12 of this title (relating to Applicable Sections of the Texas Election Code) Chapter 19 funds may not be used to fund the normal day-to-day operation of the voter registrar's office. The normal day-to-day operation of the voter registrar's office must be funded by the Commissioners Court when adopting the budget for voter registration in their county. "Normal day-to-day operation" that must be funded by the county means any duty required to be performed by counties under the Texas Election Code. Examples of such statutory duties include, but are not limited to, the physical acceptance and processing of voter registration certificates and renewals under Chapter 13, notices and corrections made under Chapter 15 and Chapter 16 and the processing and cost of supplying voter lists

under §18.001. Examples of specific items which are considered expenses incurred in the normal day-to-day operation of voter registrars' offices and not payable with Chapter 19 funds include, but are not limited to, office furniture, including file cabinets, office supplies, paper shredders, equipment leases, any phone line not dedicated to a computer modem, the repair and warranty of office equipment, printing of voter registration cards, and normal postage costs. The Agency has the sole authority to determine whether a requested item or service is a day-to-day expense and thus not payable with Chapter 19 funds.

§81.15. Funding Period.

Chapter 19 funding requests [~~for items and services~~] must be received within 30 days of the vendor's invoice date. Travel expense reimbursement requests must be submitted within 30 days of the completion of travel. Temporary employee funding requests may not cover longer than a 12 consecutive week period and must be submitted within 30 days of the end of the subject work period.

§81.16. Electronic Submission of Chapter 19 Purchase Request [~~Voucher~~] Required for Payment.

The Agency shall prescribe an electronic web-based application format for the submission of [~~a~~] Chapter 19 Purchase Request [~~Voucher Form~~] for use by each county voter registrar. In addition to any supporting documentation required by this chapter, the voter registrar must submit a signed facsimile or signed scanned image of the supporting documentation to attach to the electronic submission [~~an originally and manually signed or a signed facsimile of the Chapter 19 Purchase Voucher Form for each payee~~]. If a Chapter 19 Purchase Request [~~Voucher Form~~] is received by the Agency seeking funding which is not allowable under the Texas Election Code, Chapter 19, these rules, and Agency directives, the Agency shall so notify the voter registrar in writing within 14 business days of receipt of such form. All electronic [~~mailed~~] requests must be submitted through the designated secured electronic web application provided for Chapter 19 purchases, located at the Office of the Secretary of State web site [~~sent to: Office of the Secretary of State, Attention: Elections Funds Management, P.O. Box 12060, Austin, Texas 78711-2060~~]. Facsimile supporting documentation [~~vouchers~~] received after 5:00 p.m. will be considered to be received on the next business day.

§81.17. Competitive Bidding [~~Generally~~] Required.

Except for the purchase of voter registration advertising, the voter registrar shall submit bids for the purchase of items or services to be paid for with Chapter 19 funds according to the following guidelines:

(1) No competitive bids for individual purchases of less than $2,000 are required. However, the voter registrar shall take the steps necessary to insure that all charges are reasonable and competitive relative to the local market.

(2) Request for funding for individual purchases of $2,000 but less than $10,000 must be accompanied by three written bids from three different vendors stating the vendor's name, complete mailing address, telephone number, and the amount of the bid. Copies of all bids received will be forwarded to the Agency as an attachment with the electronic submission. In instances when the specifications on the lowest bid are unacceptable, a signed letter by the voter registrar must accompany stating reason specifications on the lowest bid does not meet your needs.

(3) Any request for funding for a purchase of $10,000 or greater must have received the prior written approval of the Agency. Upon receipt of such approval, the voter registrar will advertise for bids in the manner dictated by county regulations. Copies of all bids received will be forwarded to the Agency as an attachment with the electronic submission.

(4) If a purchase is handled by a county's purchasing department, the voter registrar may use county purchasing guidelines instead of those set by paragraphs (1) and (2) of this section. However, a copy of the bids, if applicable per your county, a copy of the county guidelines and signed recommendation of the county purchasing department must be submitted with the Chapter 19 Purchase Request [~~Voucher Form~~].

(5) Sole source vendor purchases and situations when the lowest bid is not accepted are discouraged. In rare instances when this type of purchase is required, a waiver request, stating a justification, must be submitted and signed by the voter registrar. If the item [~~to be~~] purchased is greater than $2,000, the waiver request must also be signed by the person responsible for county purchases. Only when a sole source vendor purchase or the acceptance of a bid higher than the lowest bid is required by county guidelines may such purchases be reimbursed [~~paid for~~] with Chapter 19 funds and then, only upon receipt of the waiver request described herein above.

§81.18. Approval Requirements for the Secretary of State.

A Chapter 19 Purchase Request [~~Voucher Form~~] shall not be processed for payment without the written approval of the Director of Elections. [~~Chapter 19 Purchase Voucher Forms in excess of $1,000 shall not be processed for payment without the written approval of the Deputy Secretary of State. Chapter 19 Purchase Voucher Forms in excess of $10,000 shall not be processed for payment without the written approval of the Secretary of State.~~]

§81.19. Method of Payment.

Except for travel advances provided by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), all payments made from Chapter 19 funds will be issued on a reimbursement basis, [~~made~~] only after the goods or services have been received. An invoice from the vendor must be submitted with all Chapter 19 Purchase Request [~~Voucher Forms~~]. The signed timesheet required by §81.22 of this title (relating to Use of Chapter 19 Funds for Temporary Employees) will be considered a "vendor's invoice" for purposes of this rule. Payments [~~Warrants~~] issued by the State Comptroller of Public Accounts will be payable to the county, in the form of direct deposit to a separate bank account established by the voter registrar [~~county employees for travel reimbursements, or to third party vendors or providers of goods or services, as the case may be~~]. The county shall establish and maintain a bank account for the sole purpose of depositing and expending Chapter 19 funds; any interest earned in such an account becomes part of the Chapter 19 fund. The voter registrar shall not commingle Chapter 19 funds with any other county fund or account. The voter registrar shall complete bank reconciliations on a monthly basis. Bank reconciliations are considered part of the Chapter 19 fund records and must be available if requested to the Secretary of State for audit purposes. Except for travel expenses authorized by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), no cash payments may be made from Chapter 19 funds. All disbursements payments of Chapter 19 funds must be made by check or state warrant drawn on the Chapter 19 prescribed bank account by this section.

§81.20. Ownership of Equipment Purchased with Chapter 19 Funds.

Items and equipment purchased with Chapter 19 funds are the property of the county. The county is responsible for the maintenance and repair of such items and equipment. If items or equipment that were originally purchased with Chapter 19 funds are no longer needed or useful for voter registration purposes, the items or equipment may be transferred, with the voter registrar's approval, to other county uses. If the items or equipment are no longer needed by the county, they may be disposed of in the manner set by county guidelines. Proceeds received from the sale of items or equipment purchased with Chapter 19 funds may be

used only for voter registration purposes in a manner consistent with these rules.

§81.21. The Voter Registrar is [~~Agency~~] Required to Print Semi-annual [~~To Mail Semiannual~~] Reports.

The County will be provided with reporting capabilities to access, process and print reports semi-annually for each voter registrar and [~~The Agency will submit semiannual reports to each voter registrar and to~~] each county financial officer reflecting the activity and available balances in each county's Chapter 19 fund account. The voter registrar will promptly notify the Agency if discrepancies are noted between the records of the voter registrar and such semiannual report.

§81.22. Use of Chapter 19 Funds for Temporary Employees.

The Commissioners Court must budget for the adequate staffing of the voter registrar's office. In those instances when an unpredicted and unpredictable workload cannot be handled by the permanent voter registration staff, the Agency may approve, on a case-by-case basis, the use of Chapter 19 funds for the employment of temporary personnel in the voter registration office. In order to receive reimbursement through Chapter 19 funds [~~funding~~] for temporary staff [~~this purpose~~], the voter registrar must submit an electronic transmission of the Chapter 19 Request, with attached [~~originally and manually signed Chapter 19 Purchase Voucher Form,~~] timesheet signed by both the temporary employee and his/her supervisor. A prior approved[~~, and a~~] description of duties performed by the temporary employee(s) must be on file with the Office of the Secretary of State. These temporary personnel may be used only for special projects related to voter registration and not for the replacement of permanent full-time or part-time employees. Permanent full-time and part-time county employees may not be compensated with Chapter 19 funds. The voter registrar may have Chapter 19 funded temporary staffing a maximum of any 26 weeks out of the 52-week state fiscal year (September 1 through August 31). For example, if Employee A works one week and Employee B works the next week, the county is allowed only 24 more weeks of Chapter 19 funded temporary personnel. However, if the county employs 15 temporaries in the same week, this would count as only one week of the 26-week allowance. For tracking purposes, working one day of one week counts the same as working an entire week. For example, if Employee C works Monday only, it will count as one week of the 26-week Chapter 19 allowance. The Agency does not issue tax forms to temporary employees funded with Chapter 19 funds. For this reason, the Agency recommends that temporary employment agencies be used if available. The voter registrar should discuss the tax implications of using temporary personnel with the county auditor. The fee or rate of pay to be paid to temporary employees must reflect the fee or rate prevailing in the locale for the same or similar services. Work related injuries to temporary personnel hired with Chapter 19 funds are not the liability of the Agency.

§81.23. Travel Using Chapter 19 Funds Authorized.

(a) Chapter 19 funds may be used to pay travel expenses incurred by the voter registrar and [~~permanent~~] full-time permanent voter registration staffers to attend voter registration seminars and demonstrations. Chapter 19 funds cannot be used to reimburse fully a trip by the voter registrar, unless the purpose of the trip is exclusively related to voter registration. If a voter registrar wishes to travel to a seminar or meeting in [~~of~~] which voter registration is not the only topic, the Agency will determine the appropriate portion of the trip expenses that are [~~is~~] reimbursable pursuant to Chapter 19 and reimburse the registrar accordingly.

(b) All voter registrars who seek reimbursement from Chapter 19 funds should plan their travel to achieve maximum economy and efficiency. A comparison should be made between different modes of travel for the lowest and most economical option. All trips which include reimbursable travel must receive prior written approval from the Agency. An electronic travel request through the web-based application must state the purpose of the trip, itinerary, mode of transportation, and estimated expenses. [~~A written travel request must state the purpose of the trip, itinerary, mode of transportation and estimated expenses.~~] A Chapter 19 Electronic Travel Request [~~Form~~], prescribed by the Agency, and Chapter 19 Purchase Request [~~Voucher Form~~] must be submitted for each traveler within 30 days of the completion of travel. Travel reimbursement requests must include attached receipts for airfare, rental cars, lodging, seminar registration fees, and miscellaneous expenses. Chapter 19 funds will not cover expenses for valet parking or alcohol. Travel advances will be approved, if at all, on a case-by-case basis. Travel advance funding will not be made for meals, hotel taxes or miscellaneous expenses. Travel advance requests must be submitted through the web-based application in the form of a travel request and include a Chapter 19 Purchase Request [~~Travel Form and Chapter 19 Purchase Voucher Form~~] for each traveler. No further Chapter 19 Purchase Request [~~Voucher Forms~~] will be processed until the final accounting of any advanced travel is received.

(c) Chapter 19 travelers must obtain the lowest cost airfare. Under no circumstances will the amount of a first class ticket be paid with Chapter 19 funds. Voter registrars are to share rental cars whenever practicable. The Agency must give prior approval for the use of a rental car and the voter registrar must make a proper deduction or reimbursement whenever there is personal use of a rental car. The rental of luxury cars will be disallowed, except in special circumstances requiring the use of large cars, i.e., several employees traveling together. Travel by personal car is reimbursable at the rate set in the State of Texas Travel Allowance Guide (the "Guide") per mile with mileage computed using the originating county seat as the departure point and computing final mileage using the Official State Mileage Guide. Travel by personal car is reimbursable as long as it is less than airfare to the same destination. If more than one person is traveling to the same destination by personally owned automobile, the travelers are to ride together in a single automobile if practicable.

(d) Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination within Texas will receive the actual cost of lodging and meals, but such rates may not exceed the rates set by the [~~Travel~~] Guide. Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination outside Texas will receive the actual cost of lodging and meals not to exceed the out-of-state meals and lodging rates set by the Comptroller of Public Accounts [~~Travel Guide~~] for that location. The out-of-state rate for a city is available from the [~~State~~] Comptroller of Public Accounts or the Agency. The voter registrar must be away from his or her home county for at least six consecutive hours to qualify for the partial per diem allowed by the Guide. When requesting Chapter 19 reimbursement, the voter registrar must submit receipts for lodging, airfare, and miscellaneous expenses with the electronic submission of the Chapter 19 Purchase [~~Voucher Form~~] and [~~Chapter 19~~] Travel Request [~~Form~~]. Amounts in excess of the maximum amounts allowed by the Travel Guide will not be reimbursed. A Meal Itemization Worksheet, prescribed by the Agency, must be entered [~~completed~~] showing actual costs of meals and signed by each traveler requesting reimbursement as an attachment to your electronic submission. Receipts for such meal costs are not required to be attached. Texas Government Code, §2113.101 [~~The State Appropriations Act, General Act, 73rd Legislature, Regular Session, Chapter 1051, Article V, §13(12), 1993 Texas Session Law Serv. 4251, 5340 (Vernon)~~], prohibits reimbursement for the purchase of alcoholic beverages, gratuities, and tips.

§81.24. Membership Dues Detailed.

Membership dues to groups or associations are payable with Chapter 19 funds only if voter registration and/or election administration is the [~~sole or primary~~] purpose of the group or association.

§81.27. Electronic Office Equipment Purchases Encouraged.

Chapter 19 funds may be used for the purchase of electronic office equipment. Examples of "electronic office equipment" include, but are not limited to, copiers, fax machines, optical imaging systems, electronic retriever file systems and typewriters. Office furniture is required for the normal day-to-day operation of the voter registrar's office, and[,] accordingly, is not payable with Chapter 19 funds. Examples of such office furniture include, but are not limited to, desks, chairs and file cabinets. Pursuant to §81.20 of this title (relating to Ownership of Equipment Purchased with Chapter 19 Funds), the upkeep and maintenance of items purchased with Chapter 19 funds is the responsibility of the county. Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), the voter registrar must prorate the cost between the county and Chapter 19 funds if the purchased item is not entirely related to voter registration.

§81.29. Adherence to Rules Required.

Failure to adhere to these rules may result in the denial of reimbursement [~~funding~~] from Chapter 19 funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604045
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-9871

♦ ♦ ♦

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.36

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Securities Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Securities Board proposes the repeal of §133.36, a form concerning a request for reduced fees for certain persons registered in multiple capacities. The repeal of the existing form would allow for the simultaneous adoption of a new form, which is being concurrently proposed.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Northcutt also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an outdated form. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposal in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

Cross-reference to Statute: Texas Civil Statutes, Article 581-42.B

Statutes and codes affected: Texas Civil Statutes, Articles 581-35, 581-41, and 581-42.

§133.36. Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604034
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 305-8303

♦ ♦ ♦

7 TAC §133.36

The Texas State Securities Board proposes new §133.36, a form concerning a request for reduced fees for certain persons registered in multiple capacities. The new section adopts by reference a form which updates cross references to the rules that set out the criteria and procedure for using this form. The existing form 133.36 is being concurrently proposed for repeal.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the form will accurately reference the rules regarding use of the form to request reduced fees. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167,

Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

Cross-reference to Statute: Texas Civil Statutes, Article 581-42.B.

Statutes and codes affected: Texas Civil Statutes, Articles 581-35, 581-41, and 581-42.

§133.36. Request for Reduced Fees for Certain Persons.

Registered in Multiple Capacities. The State Securities Board adopts by reference the request for reduced fees for certain persons registered in multiple capacities form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604035
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 305-8303

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATIVE DEPARTMENT

13 TAC §11.9

The Texas Historical Commission proposes amendments to §11.9, relating to Donations. These changes are needed to comply with Texas Government Code §2255.001, which provides that an agency that has a relationship with an affiliated nonprofit entity shall adopt rules defining the relationship between the agency and the affiliated nonprofit entity. The proposed amendments will define when a contractual relationship could be established with an affiliated nonprofit agency, the handling of funds by the entity, the relationship of agency employees with the entity, the governance of the entity, and the use of agency property by the entity.

F. Lawerence Oaks, Executive Director, has determined that for the first five-year period the amendments are in effect there will not be fiscal implications for state or local governments as a result of enforcing or administering the amended rule.

Mr. Oaks has also determined that for each year of the first five year period the amendments are in effect the public benefit anticipated as a result of these amendments will be having a formal relationship established with affiliated nonprofit entities and public scrutiny of any such relationship. Additionally, Mr. Oaks has determined that there will be no effect on small and micro businesses. There will be no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Government Code, §442.005(q) which provides the Commission with authority to promulgate rules that it considers proper for the effective administration of this chapter and Texas Government Code §2255.001, which provides that an agency that has a relationship with an affiliated nonprofit entity shall adopt rules defining the relationship between the agency and the affiliated nonprofit entity.

Texas Government Code §442.005(p) is affected by this proposal.

§11.9. Donations and Relationship with Affiliated Non-Profit Organizations.

(a) Donations

(1) [~~Use and place of deposit.~~] All funds received from donations to the commission will be deposited to the state treasury and used for the purpose specified by the donor, or for general commission programs when no purpose is specified.

(2) [~~(b) Serving as officer or director. No employee of the commission may serve as an officer or director in any organization making donations to the commission.~~]

[~~(c) Supplementation of salary.~~] Donations to the commission will not be used for supplementation of salary of any employee of the commission.

(3) [~~(d) Contributions from grant recipients or organizations and individuals with projects under review.~~] The commission will not accept donations from organizations or individuals administering grants from the commission or which have projects undergoing review by the commission.

(4) Donations other than money may be accepted at the discretion of the commission.

(b) Relationship with Affiliated Non-Profit Organization

(1) The commission is authorized to participate in the establishment and operation of an affiliated nonprofit organization whose purpose is to raise funds for or provide services or other benefits to the commission by Texas Government Code §442.005(p).

(2) The commission, by vote of the commission in a duly posted meeting, may authorize the establishment of a contractual relationship with a non-profit organization for any purpose authorized by law and in compliance with this section.

(3) The contract or other agreement with the affiliated non-profit organization shall set out fully the relationship between the commission and the affiliated non-profit organization, and shall meet the following requirements:

(A) Administration and investment of funds received by the organization for the benefit of the commission.

(i) All records of the affiliated non-profit organization shall be available for inspection or audit by the commission or its designee.

(ii) A representative of the affiliated non-profit organization shall regularly report to the commission on the operations of the affiliated non-profit organization.

(iii) Funds or other assets of the affiliated non-profit organization shall be administered and invested in a manner to be provided in the contract or other agreement. At a minimum, funds received by the affiliated non-profit organization shall be handled as follows:

(I) Funds shall be placed in an account at a financial institution within ten business days of receipt.

(II) Funds shall be placed in an interest-bearing or other investment account in accordance with the investment policy of the affiliated nonprofit organization.

(III) Funds shall be used only to support approved projects of the commission or to pay administrative expenses of an affiliated non-profit organization.

(IV) Employees of the commission shall not be signatories on accounts of an affiliated non-profit organization.

(B) Use of an employee or property of the agency by the affiliated non-profit organization.

(i) Staff of the commission may assist in the operation of the affiliated non-profit organization during regular work hours only with the written approval of the executive director.

(ii) Staff involved in regulatory functions of the commission shall not participate in the management of the affiliated non-profit organization except on a case-by-case basis with the written approval of the executive director. All staff involved in the development of grant proposals may provide subject-matter expertise for the grant proposals, including, with the written approval of the executive director, participating in the presentation of grant proposals to potential donors.

(iii) Property of the commission may be used in support of an affiliated non-profit organization so long as the use serves a public purpose and is within the limitations of this section and any contract or agreement between the commission and the affiliated non-profit organization. Any state property entrusted to the affiliated non-profit organization must remain on the inventory of the commission and be properly accounted for in accordance with state agency requirements.

(iv) The commission may provide office space, pay utilities, and pay other expenses of an affiliated non-profit organization as long as any such expense serves a public purpose and is within the limitations of this section and any contract or agreement between the commission and the affiliated non-profit organization.

(4) Prohibitions in relationship with affiliated non-profit organization.

(A) An employee of the commission may not serve as an employee, elected officer or director of an affiliated non-profit organization. An employee of the commission may serve as an ex officio, non-voting director of an affiliated non-profit organization.

(B) A commissioner or employee of the commission shall not receive monetary enrichment from the affiliated non-profit organization except with the approval of the executive director, or, in the case of the executive director or a commissioner, with the approval of the commission.

(5) The commission may recommend or nominate individuals to serve as officers, directors, or employees of an affiliated non-profit organization.

(6) The commission shall have a formal liaison committee or other, similar group to monitor the operation of an affiliated non-profit organization.

(7) An affiliated non-profit organization will not knowingly accept donations from organizations or individuals administering grants from the commission or which have contracts with the commission. Should such a donation be accepted, it shall be returned upon discovery of such a relationship.

(8) An affiliated non-profit organization may not expend funds for the purpose of influencing legislative action, either directly or indirectly.

(9) The commission shall review its relationship with an affiliated non-profit organization on a schedule to be established by the commission, but not less than once every 10 years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604030
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 936-4323

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 67. AUCTIONEERS

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§67.10, 67.20 - 67.22, 67.25, 67.40, 67.65, 67.70, 67.80, and 67.94, regarding the Auctioneers program. The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code, §§67.23, 67.24, 67.71, and 67.72, and the repeal of 16 Texas Administrative Code, §§67.41, 67.42, 67.60, 67.81 - 67.83, 67.90, 67.100, 67.101, and 67.102, regarding the auctioneers program.

Rule 67.10 Definitions is amended to delete the definition of "cheating" as it states the obvious. Three new definitions are added. The word "bond" is defined since the term is used in the statute in reference to the recovery fund. The word "operated" is defined to make it clear that operating an auction company requires more than being employed to bid call and finally, the word "participated" is defined to mean "to perform bid calling."

Rule 67.20 is amended in several respects. The first is a change in title from "Licensing Requirements Auctioneers" to "Licensing Requirements Auctioneer". Subsection (a) is amended by dropping the phrase, "on the form provided by the department." Subsection (b)(3)(A) is amended by adding the word "a" before

”written. Subsection (b)(3)(B) is amended to clarify what an individual who is applying for a license without having passed an examination must provide in his application. Subsection (b)(6) is amended by deleting the reference to applications filed after January 1, 2004, as it is no longer applicable. Further subsections (b)(6)(A) and (B) are deleted in this rule and requirements for schools providing training are set out in new §67.23. Subsection (c) is deleted and is now set out in new §67.70(j). Subsection (d) is deleted and is now set out in new §67.24.

Rule 67.21 License Requirements--Associate Auctioneers is amended to reflect requirements for licensure rather than practice requirements. To that end subsections (a) - (e) are deleted as they reflect practice requirements.

Rule 67.22 License Requirements--Examination is amended to provide information concerning when an applicant may take an examination and subsections (a) - (e) are deleted as (a), (b) and (c) set out procedures for scheduling and taking examinations while (d) is no longer applicable and (e) deals with disciplinary matters addressed in the Commission’s general rules found in 16 Texas Administrative Code, Chapter 60.

Rule 67.23 Pre-licensure Education is a new rule that describes the statutory requirement that applicants must have at least 80 hours of training in approved courses and how a course provider or school may obtain course approval.

Rule 67.24 License Renewal is a new rule specifying that licenses expire one year from the date of issuance and that timely application for renewal must be made to avoid late renewal fees.

Rule 67.25 Continuing Education is amended at subsection (d) by the deleting the phrase ”for one renewal period.” The phrase is deleted because it is not needed and to make this rule language the same as similar rules adopted for other licensing programs administered by the department. Each course is approved annually and is assigned a unique number for that year, even though the subject matter may be the same for more than one year. The deleted phrase is not needed.

Rule 67.40 Education and Recovery Fund is amended at subsection (b) to add the phrase, ”based on the fund balance” to make it clear that a determination regarding additional fees is not required on December 31 of each year, but that the determination is based on the fund balance at the end of each year. Subsection (c) is deleted as it adds nothing to the process of maintaining the fund. Old subsection (d) (now subsection (c)) is amended to make it clear that all applicants for licensure must pay the initial fee before a license will be issued. New subsections (d) - (h) are replacements as needed, for deleted §64.41 and §67.42.

These new subsections detail the process for payments made from the recovery fund to persons harmed by actions of licensees and they provide details of the statutory requirements for the licensee to repay the fund and to pay to customers who are harmed any amount due to the customer not paid by the fund. The statute requires payment of interest and it allows the department to establish payment procedures that it may allow an auctioneer to use. The proposed rules provide that repayment shall be made in monthly installments determined by agreement between the department and the licensee with input from the customer. Failing agreement, the rule provides for minimum payments depending on the size of the debt.

Rule 67.60 is deleted as responsibilities of the department do not require rules.

Rule 67.65 Advisory Board is amended at subsection (a) to more clearly set out duties of the board. Subsections (d) and (e) are deleted since they repeat requirements for the makeup of the board that unambiguously are set out in statute and are not needed in rule.

Rule 67.70 Auctioneer Requirements is amended in its title to reflect that the rule addresses auctioneer requirements only and not requirements for associate auctioneers. Subsection (a) is amended to delete the reference to auction companies, and to require an auctioneer to list his license number on advertisements for auctions that the auctioneer operates. Subsection (d) is amended to require that the auctioneer, as opposed to an auction company, must provide assumed names if any, of any auction company the auctioneer owns. Subsection (c) is new to this rule but is similar to old §67.100(a) which is deleted. The rule makes it clear that an auctioneer may not allow an unlicensed person to call bids at an auction. Old subsection (c) is deleted and is replaced in §67.71(b). Subsection (d) is new to the rule and is the same as old §67.100(b). Old subsection (d) is deleted. New subsection (e) is the same as old §67.100(c) and is moved here for clarity. Old subsection (e) is deleted and is similar to new subsection (b) of §67.94.

The language of the following new subsections to the rule is the same as language in the old subsections of rules. They are moved here for clarity. After each new subsection listed below is a reference to the old subsection:

§67.70(f) - §67.100(d)

§67.70(g) - §67.100(e)

§67.70(h) - §67.100(f)

§67.70(i) - §67.100(g)

§67.70(k) - §67.101

§67.70(l) - §67.102(a)

§67.70(m) - §67.102(b)

§67.70(n) - §67.102(c)

Rule 67.70 new subsection (j) is the similar to old §67.20(c). It is moved here for clarity.

New rule 67.71 Requirements--Sponsoring Auctioneers is added to clearly spell out the responsibilities of a licensed auctioneer who serves as a sponsor for an associate auctioneer. The language of subsection(a) comes largely from old §67.21(a) requiring an employer - employee relationship between the sponsor and the associate. The new subsection also recognizes that an associate may be employed by an auction company that also employs the sponsoring auctioneer. Subsection (b) is similar to old §67.70(c). Subsection (c) is intended to replace the provisions of old §67.21(b). Subsection (d) is new and makes it clear that a sponsoring auctioneer who terminates his relationship with an associate must provide documentation to the associate of matters an associate must have performed in order to become licensed without taking an examination that were performed by the associate under the supervision of the sponsor.

Rule 67.72 Requirements--Associate Auctioneers is a new rule that clearly sets out practices requirements for associates. Subsection (a) is similar to old §67.21(a) and it makes it clear that an associate may be supervised only by the sponsoring auctioneer.

Subsection (b) is similar to old §67.70(c). Subsection (c) specifies the functions that an associate must have performed under his sponsor's supervision in order for the associate to qualify to become licensed as an auctioneer without taking the examination. Subsection (d) is similar to old §67.20(c). Subsection (e) makes it clear that an associate may not provide auctioneer services except under the supervision of a sponsoring auctioneer.

Rule 67.80 is amended to make it the "Fees" rule rather than having several fee rules. Subsection (a) is amended to make it clear that the fee is an application fee for a license, and subsection (b) is amended to do the same for associate auctioneers. Subsection (c) is new and is similar to old §67.81(a) clarified so that it refers to a fee for application for renewal. Subsection (d) is the same for old §67.81(b). Subsection (e) is the same as old §67.81(c). Subsection (f) is similar to old §67.82. Subsection (g) is the same as old §67.83. Subsection (h) sets out the fee for curriculum review for auctioneer schools seeking approval. Subsection (i) is similar to old §67.40(d) with minor language changes, but no fee change. Subsection (i) makes it clear that all fees are non-refundable as they are all application fees, not licensing fees with the exception of the initial recovery fund fee.

Rule 67.81 Fees--Renewal and §67.82 Fees--Duplicate License are deleted as their provisions are now in §67.80.

Rule 67.90 Sanctions--Administrative Sanctions/Penalties is deleted. The provisions of this rule are found in the general Rules of the Commission, 16 Texas Administrative Code, Chapter 60.

Rule 67.94 Sanctions--Revocation, Suspension or Denial Because of a Criminal Conviction is amended at subsection (a) making statutory references current and to replace the word "commissioner" with "commission".

New subsection (b) is similar to old §67.60(a) which was deleted.

Rule 67.100 is deleted and its provisions are now found in §67.70 and §67.72. Rule 67.101 is deleted and its provisions are now found in §67.70. Rule 67.102 is deleted and its provisions are now found in §67.70.

These rule changes are necessary to bring the rules into compliance with the statute and to make them easier to understand.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments, deletions and new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules, amendments and deletions are in effect, the public benefit will be that the rules are more logically structured making them easier to comprehend, the language is clarified and the duties of auctioneers who supervise associate auctioneers are defined.

There will be no effect on large, small, or micro-businesses as a result of the proposed amendments, new rules and deletions. There are no anticipated economic cost increases to persons who are required to comply with the rules as amended.

Comments on the proposals may be submitted to Tamala Fletcher, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§67.10, 67.20 - 67.25, 67.40, 67.65, 67.70 - 67.72, 67.80, 67.94

The amendments and new rules are proposed under Texas Occupations Code, Chapter 1802, and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 1802 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§67.10. Definitions.

The following words and terms, when used in this chapter [~~section~~] shall have the following meanings, unless the context clearly indicates otherwise.

(1) Auction without reserve--(also called Absolute Auction)--An auction in which property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, and where the seller may not bid himself or through an agent.

(2) Auction with reserve--An auction in which the seller or his agent reserves the right to establish a minimum bid, accept or reject any and all bids, and withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer.

(3) Bond--Recovery fund fee.

[~~(3) Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception while taking a qualification examination.~~]

(4) Employed by a licensed auctioneer--Participating in all aspects of the auction business under the supervision of a licensed auctioneer.

(5) Operated--Means to have fiduciary and operational responsibilities for all aspects of an auction company's auctions conducted in Texas, and to have supervisory responsibility for the company's employees who perform auction functions in Texas.

(6) Participated--Means to have performed bid calling.

(7) [~~(5)~~] Recurring basis--More than once every 12 months.

§67.20. License Requirements Auctioneer [~~Auctioneers~~].

(a) An applicant for licensure as an auctioneer must submit a completed application [~~on the form provided by the department~~] along with required fees.

(b) To obtain a license as an auctioneer an applicant must:

(1) be at least 18 years of age;

(2) be a citizen of the United States or a legal alien;

(3) either

(A) pass a written or oral examination provided by the department; or

(B) provide proof of having [~~have~~] been employed and trained by a licensed auctioneer for at least two years and of having [~~have~~] participated in at least ten auctions;

(4) hold a high school diploma or a high school equivalency certificate;

(5) not have been convicted of a felony within five years of the application date; and

(6) [~~for applications filed after January 1, 2004,~~] show proof of successful completion of at least 80 hours of classroom instruction at an auction school with a curriculum approved by the department.

[~~(A) Proprietary auction schools having a Certificate of Approval issued by the Texas Workforce Commission may obtain department approval by submitting an application for Auction School Registration along with the certification.~~]

[~~(B) Other auction schools submitting an application for Auction School Registration will be reviewed on a case by case basis to assure that licensing applicants presenting credentials from the schools will have completed at least 80 hours of classroom instruction in courses relating to auctions.~~]

[~~(c) All licensees must report any change of address to the department within 30 days.~~]

[~~(d) Licenses expire one year from the date of issuance and must be renewed by that date to avoid late renewal fees.~~]

§67.21. License Requirements--Associate Auctioneers.

An applicant for licensure as an associate auctioneer must:

(1) submit a completed application along with required fees;

(2) be sponsored by a licensed auctioneer; and

(3) either be a citizen of the United States or a legal alien.

[~~(a) Associate auctioneers must be employed by, and under the direct on-premises supervision of a licensed Texas auctioneer. An associate auctioneer shall offer his services only to a Texas licensed auctioneer. There must be a legitimate employee-employer relationship between the associate and the licensed auctioneer.~~]

[~~(b) An associate auctioneer must participate in all aspects of the auction business involving the laws of this state. To satisfy the eligibility requirements for an Auctioneer license under the Texas Occupations Code, §1802.052(a)(3)(B) an associate auctioneer must be licensed for two years and bid-call in at least 10 auctions, and must participate in, but not have sole responsibility for each of the following tasks at least once: appraising, inventorying, advertising, property make ready, site selection and preparation, lotting, registration, clerking, cashiering, bid-calling, ring working, property check out, security, accounting, and managing an escrow account.~~]

[~~(c) Any change of employment by a licensed associate auctioneer must be submitted to the department's Austin office prior to such action and a letter must be submitted by the former employer stating the areas in which the associate auctioneer participated and the number of auction sales at which the associate participated as bid-caller.~~]

[~~(d) To obtain a license as an associate auctioneer an applicant must either be a citizen of the United States or a legal alien.~~]

[~~(e) Licenses expire one year from the date of issuance and must be renewed by that date to avoid late renewal fees.~~]

§67.22. License Requirements--Examinations.

If an applicant fails the examination twice during the one year application period, the application will be terminated and the applicant may not reapply until one year from the date of the second failure.

[~~(a) Applications for examinations must be complete and must be postmarked at least 30 days before the scheduled examination.~~]

[~~(b) An applicant who wishes to reschedule his examination for a later date must notify the department in writing, postmarked no later than five working days before the exam date. Two free reschedules are allowed.~~]

[~~(c) An applicant who does not take an examination for which he was scheduled, and does not notify the department that he will not take the exam, must pay another exam fee.~~]

[~~(d) An applicant who passes an examination may be licensed up to 90 days from the date on the grade notice sent by the department.~~]

[~~(e) Cheating on an examination is grounds for denial of a license.~~]

§67.23. Pre-licensure Education .

(a) Proprietary auction schools having a Certificate of Approval issued by the Texas Workforce Commission may obtain department approval by submitting an application for Auction School Registration along with the certification and payment of the curriculum review fee.

(b) Other auction schools submitting an application for Auction School Registration will be reviewed on a case by case basis to assure that licensing applicants presenting credentials from the schools will have completed at least 80 hours of classroom instruction in courses relating to auctions.

§67.24. License Renewal.

Licenses expire one year from the date of issuance and must be renewed by that date to avoid late renewal fees.

§67.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license as an auctioneer or associate auctioneer, a licensee must complete six hours of continuing education in courses approved by the department, including two hours of instruction in laws and rules that regulate the conduct of auctioneers and associate auctioneers.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once [~~for one renewal period~~].

(e) A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Occupations Code, Chapter 1802, Auctioneers;

(2) Title 16, Texas Administrative Code, Chapter 67, Auctioneers Administrative Rules;

(3) other laws and rules that regulate the conduct of auctioneers and associate auctioneers;

(4) auction-related laws, such as the Uniform Commercial Code--Sales, Title 1, Chapter 2, Texas Business and Commerce Code

§2.328 and the Deceptive Trade Practices-Consumer Protection Act, Chapter 17, Subchapter E, Texas Business and Commerce Code; or

(5) business practices, such as insurance, auction ethics, contracts, maintenance of trust accounts, and marketing.

(g) This section shall apply to providers and courses for auctioneers and associate auctioneers upon the effective date of this section.

(h) This section shall apply to auctioneer and associate auctioneer licenses issued under Texas Occupations Code, Chapter 1802, Subchapter B that expire on or after January 1, 2006.

§67.40. Education and Recovery Fund.

(a) In each year in which the balance of the Education and Recovery Fund is less than $300,000 the Department will determine the fee that shall be paid by all license holders into the Education and Recovery Fund (The Fund).

(b) The necessity for assessing the fee will be determined by the Department based on the fund balance on each December 31st. The fee shall be paid in addition to the renewal fee. The renewal notice sent by the Department will reflect the fee due to the fund.

[~~(c) The fee that is assessed by the Department shall be in effect for a period of 12 months. The fee shall be paid by each license holder, upon annual renewal of the license during the 12-month period.~~]

(c) [~~(d)~~] Applicants [~~In addition to any other fees, all new applicants~~] for an Auctioneer or Associate Auctioneer license shall [~~will~~] pay the initial recovery [~~a $100~~] fee to the fund before a license will be issued.

(d) If the department determines, either with the agreement of the auctioneer and claimant or at a hearing held on a disputed amount, that the auctioneer owes to the aggrieved person damages greater than the maximum of $10,000 allowed under the Act, the auctioneer must pay the amount not paid by the department to the aggrieved party. If the department determines that the auctioneer owes damages to more than one aggrieved person arising out of one auction at one location, and the sum of all damages owed exceeds $20,000, the department shall prorate $20,000 from the recovery fund among the aggrieved persons, and the auctioneer must pay the amount not paid to each of the aggrieved persons.

(e) The total payment from the recovery fund of claims against an auctioneer may not exceed $20,000. If additional claims are filed before the auctioneer has reimbursed the Fund and repaid any amounts due an aggrieved party, the department shall hold a hearing to determine if the additional claims must be satisfied by the auctioneer before the commissioner issues or renews a license, whether probated or not.

(f) If a claim is paid against an auctioneer, and the auctioneer cannot immediately reimburse the recovery fund, the Executive Director may allow the auctioneer to sign an agreement with the department to reimburse the Fund at the applicable rate described below plus the interest accrued on the unpaid principal during the prior month at the rate of 8 percent per year.

(g) If an amount is due an aggrieved party, and the auctioneer cannot immediately pay the aggrieved party, the Executive Director may allow the auctioneer to sign an agreement with the party to reimburse the aggrieved party at the applicable rate described below plus the interest accrued on the unpaid principal during the prior month at the rate of 8 percent per year.

(h) Reimbursement of the principal owed is to be paid in monthly installments determined by agreement between the department and the auctioneer with consideration given to input from any aggrieved party. If an agreement is not reached, monthly installments shall be determined as a percentage of the initial principal amount according to the following schedule:

(1) $0.01 - $500.00--20%

(2) $500.01 - $1,000--10%

(3) $1,000.01 - $3,000.00--5%

(4) $3,000.01 and over--3%

§67.65. Advisory Board.

(a) The board [~~The purpose of the Auctioneer Education Advisory Board~~] is established to advise the Commission on educational matters including those matters relating to use of the educational trust fund established with fees collected for the auctioneer recovery fund.

(b) Recommendations of the board will be transmitted to the Commission.

(c) Board meetings are called by the Presiding Officer. Meetings in excess of one each calendar quarter shall be authorized by the Commission or the Commission's designee.

[~~(d) The board shall consist of the auctioneer members specified in the Act, the commissioner of the Texas Department of Commerce and the commissioner of education or their designees, and three consumers of services provided by licensed auctioneers.~~]

[~~(e) The consumers of services should include at least one person who consigns property to auctioneers for sale and at least one person who regularly buys at auction. Consumer members serve for terms of two years and expire September 1 of the year of expiration.~~]

§67.70. Auctioneer Requirements [~~of the License Holder~~].

(a) An auctioneer [~~auction company~~] must list his [~~the~~] license number [~~under which it is operating~~] in any yellow page advertisement which consists of more than name, address and phone number.

(b) An auctioneer must furnish to the department the name, including assumed names, address, and phone number of all auction companies which he owns or operates. [~~Any auction company using an assumed name must furnish a copy of the assumed name registration.~~]

(c) A licensee may not allow any person who is not either a licensed auctioneer or a licensed associate auctioneer to call bids at a sale.

[~~(c) An auctioneer who is supervising an associate auctioneer must be on premises for any auction which is bid-called by the associate auctioneer.~~]

(d) A licensee may not knowingly use, or permit the use of, false bidders, cappers, or shills at any auction.

[~~(d) An auctioneer or an associate auctioneer who is licensed in Texas, or who is licensed in another state as well as in Texas, who has been convicted of a felony or a misdemeanor either in Texas or in another state, must notify the department no later than thirty days after being convicted.~~]

(e) Before beginning an auction, a licensee must announce, give notice, display notice and/or disclose:

(1) that the auctioneer conducting the sale is licensed by the department and is covered by a Recovery Fund administered by the department;

(2) the terms and conditions of the sale including whether a buyer's premium will be assessed; and

(3) if the owner, consignor, or agent thereof has reserved the right to bid.

~~[(e) An auctioneer or an associate auctioneer who is in another state as well as in Texas, who has had his auctioneer license in another state suspended, revoked, or renewal denied as a result of an administrative hearing, must notify the department of the administrative action no later than thirty days after receipt of the final order advising of that action.]~~

(f) If an auctioneer advertises an auction as "absolute" or "without reserve", no lots included may have a minimum bid. Advertising may include the wording, "many lots are without reserve"; however, the auction may not be titled, headed or called an "absolute" or "without reserve" auction unless all lots meet that criteria.

(g) All auctioneers shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. The licensees may use a sticker or rubber stamp to convey the required information. The notification shall be included on any seller or consignor contract and on at least one of the following:

(1) a sign prominently displayed at the place of the auction;

(2) bills of sale or receipt to be given to buyers; or

(3) on bidder cards.

(h) An auctioneer who intends to charge a buyer's premium at an auction must state this condition and the amount of the buyer's premium in all advertising for the auction.

(i) Any statement in an advertisement for an auction that alters the meaning of another statement in the advertisement must be in a type font at least as large as the type font of the statement it alters.

(j) An auctioneer must report any change of address to the department within 30 days.

(k) Each licensed auctioneer must:

(1) maintain a separate trust or escrow account in a federally insured bank or savings and loan association, in which shall be deposited all funds belonging to others which shall come into the auctioneers possession;

(2) deposit all proceeds from an auction into his trust or escrow account within 72 hours of the auction unless the owner/consignor of the property auctioned is paid immediately after the sale or the written contract stipulates other terms, such as sight drafts;

(3) pay any public monies, including but not limited to state sales tax, received into the State Treasury at the times and as per the regulations prescribed by law; and

(4) pay all amounts due the seller within 15 banking days of the auction unless otherwise required by statute or a written contract between license holder and seller.

(l) Each licensed auctioneer shall keep records relative to all auctions for at least two years from the date of the sale.

(m) The records for each auction must state the name(s) and address of the owners of the property auctioned, the date of the sale, the name of the auctioneer and clerk for the sale, the gross proceeds, the location and account number of the auctioneer's trust or escrow account, an itemized list of all expenses charged to the consignor or seller, a list of all purchasers at the auction and a description and selling price for each item sold.

(n) In addition, the auctioneer shall keep, as part of the records for each auction, all documents relating to the auction. These documents shall include, but are not limited to, settlement sheets, written contracts, copies of advertising and clerk sheets.

§67.71. Requirements--Sponsoring Auctioneer.

(a) There must be a legitimate employee-employer relationship between an associate auctioneer and the sponsoring auctioneer or between the associate and an auction company operated by a licensed auctioneer that employs the sponsoring auctioneer.

(b) A sponsoring auctioneer must be on premises and directly supervising an associate auctioneer when the associate is bid calling.

(c) A sponsoring auctioneer is responsible for supervision of an associate auctioneer as he performs the items listed in Rule 67.72(c).

(d) An auctioneer who terminates his sponsorship of an associate auctioneer must:

(1) within thirty days notify the Department in writing; and

(2) provide signed documentation to the associate auctioneer showing:

(A) the beginning and ending date of the sponsorship;

(B) date and location of up to ten auctions bid called by the associate;

(C) items listed in Rule 67.72(c) that the associate has performed.

§67.72. Requirements--Associate Auctioneers.

(a) An associate auctioneer shall provide auction services only when under the supervision of the licensed Texas auctioneer whose name is on file with the Department as the associate's sponsoring auctioneer.

(b) When bid calling, an associate auctioneer must be under the direct on premises supervision of the sponsoring auctioneer

(c) In order to be eligible for licensure as an auctioneer without taking examination an associate auctioneer must participate in all aspects of the auction business involving the laws of this state, including but not limited to:

(1) appraising;

(2) inventorying;

(3) advertising;

(4) property make ready;

(5) site selection and preparation;

(6) lotting;

(7) registration;

(8) clerking;

(9) cashiering;

(10) bid-calling at least ten auctions;

(11) ring working;

(12) property check out;

(13) security;

(14) accounting; and

(15) managing an escrow account.

(d) An associate auctioneer must report any change of address to the department within 30 days.

(e) When a sponsoring auctioneer terminates his sponsorship of an associate auctioneer, the associate may not provide auction

services until he has an agreement with a new sponsoring auctioneer whose name and signature are on file with the Department.

§67.80. Fees[~~--Original License~~].

(a) The application fee for an auctioneer license is $50.

(b) The application fee for an associate auctioneer license is $25.

(c) The annual application fee to renew an auctioneer license is $50.

(d) The annual application fee to renew an associate auctioneer license is $25.

(e) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(f) A $25 fee will be charged for issuing a duplicate license.

(g) A $50 fee will be charged for each examination.

(h) A $500 curriculum review fee will be assessed to all schools submitting their curriculum for review and approval by the department.

(i) The initial recovery fund fee is $100.

(j) all fees are non refundable.

§67.94. Sanctions--Revocation, Suspension, or Denial Because of a Criminal Conviction.

(a) Pursuant to Texas Occupations Code, Chapter 53 [~~Civil Statutes, Article 6252-13c~~], the commission [~~commissioner~~], after a hearing, may suspend, revoke, or deny an existing license, or disqualify a person from receiving a license, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in performing the duties of an auctioneer. The commission [~~commissioner~~] may also, after hearing, suspend, revoke, or deny a license because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(b) The department may initiate administrative action to deny a license based upon proof of a final order issued by another state if the offense against the other state's law or administrative rules would have been an offense against the Act or these rules if committed in Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604037
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6208

♦ ♦ ♦

16 TAC §§67.41, 67.42, 67.60, 67.81 - 67.83, 67.90, 67.100 - 67.102

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, Chapter 1802, and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapter 1802 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposed repeal.

§67.41. Education and Recovery Fund--Definitions.
§67.42. Education and Recovery Fund--Claims.
§67.60. Responsibilities of the Department.
§67.81. Fees--Renewal.
§67.82. Fees--Duplicate License.
§67.83. Fees--Examination.
§67.90. Sanctions--Administrative Sanctions/Penalties.
§67.100. Technical Requirements--General.
§67.101. Technical Requirements--Handling Funds.
§67.102. Technical Requirements--RecordKeeping.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604036
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6208

♦ ♦ ♦

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.102

The Texas Lottery Commission proposes amendments to 16 TAC §402.102, relating to Bingo Advisory Committee (BAC). The purpose of the proposed amendments is to clarify the BAC's responsibility to report to the Commission and the basis for removal of a member of the BAC.

Kathy Pyka, Controller, has determined for each year of the first five years the proposed amendments are in effect there will be no fiscal implications to state or local government. There will be no impact on small or micro businesses, individuals, or local or state employment as a result of implementing the amended section.

William L. Atkins, Charitable Bingo Operations Director, Charitable Bingo Operations Division, has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of the proposed amendments is a clearer understanding of the perspective the BAC is to provide when reporting to the Commission, and a clearer understanding of the reasons for which a person can be removed from the BAC.

Written comments on the proposed amendments may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, by facsimile, or via the agency's website online public comment form. The Commission will hold a public hearing on this proposal at 11:00 a.m. on Tuesday, August 29, 2006, at 611 E. 6th Street, Austin, Texas. Comments must be received within 30 days after publication of the proposed amendments in the *Texas Register* in order to be considered.

The amendments are proposed under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The amendments implement Occupations Code, Chapter 2001.

§402.102. Bingo Advisory Committee.

(a) - (d) (No change.)

(e) Reports. The BAC [~~Committee~~] will report, at a minimum, quarterly to the Commission on the BAC's activities, and more frequently as deemed appropriate or [~~and~~] necessary by the BAC or the Commission [~~presiding officer~~]. Annually, the BAC will report to the commission the BAC's perspective on the state of charitable bingo in Texas with specific comments on [~~recommendations for improvement, the status of~~] the following areas [~~relating to charitable bingo in Texas~~]:

(1) gross receipts;

(2) net receipts;

(3) [~~(2)~~] charitable distributions;

(4) [~~(3)~~] expenses;

(5) [~~(4)~~] attendance; and[~~,~~]

(6) [~~(5)~~] any other area requested by the commission.

(f) - (j) (No change.)

(k) Removal. A member of the BAC may be removed if he/she represents an organization licensed by the Commission [~~commission~~] that is delinquent in payment of any prize fees or gross rental taxes for which a final jeopardy determination has been made by the Commission [~~any liability to the state~~] or if he/she represents an organization licensed by the Commission [~~commission~~] that has a license denied, revoked or suspended by the Commission [~~commission~~]. The decision by the Commission [~~commission~~] to remove a member of the BAC is final.

(l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 2, 2006.

TRD-200604022

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 344-5113

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL ALLOTMENT

19 TAC §§61.1091 - 61.1101

The Texas Education Agency (TEA) proposes new §§61.1091 - 61.1101, concerning the high school allotment for school districts. The proposed new sections would implement provisions for the administration of high school allotment funds in accordance with the Texas Education Code (TEC), §39.113, Recognition of High School Completion and Success and College Readiness Programs, §39.114, High School Allotment, and §42.2516, Additional State Aid for Tax Reduction, as added by House Bill (HB) 1, 79th Texas Legislature, Third Called Session.

HB 1, 79th Texas Legislature, Third Called Session, amended the TEC by adding §42.2516(b)(3), which provides additional state aid to districts for the purpose of improving graduation and college readiness rates, and §39.113 and §39.114, which authorize the commissioner of education to adopt rules to implement provisions relating to use of this additional state aid referred to as the high school allotment.

Recognizing that overall graduation and college readiness rates in Texas high schools, while improving, are still too low, the Texas Legislature provided additional funds for the purpose of addressing these achievement issues. Specifically, the Legislature directed that these funds be used for the purposes of: (1) preparing underachieving students in Grades 9-12 for entrance into institutions of higher education, (2) encouraging all students in Grades 9-12 to pursue advanced academic opportunities, (3) providing opportunities for students to take academically rigorous course work, (4) aligning secondary and postsecondary curriculum and expectations, and (5) supporting other promising high school completion and success initiatives in Grades 6-12 approved by the commissioner of education.

The proposed new rules in 19 TAC Chapter 61, School Districts, Subchapter II, Commissioner's Rules Concerning High School Allotment, would implement the statutory provisions of the high school allotment as follows.

Proposed new 19 TAC §61.1091, Definitions, would establish applicable definitions when used in the context of the new subchapter.

Proposed new 19 TAC §61.1092, Payment of the High School Allotment, would establish provisions relating to calculation, payment and reconciliation, and reporting.

Proposed new 19 TAC §61.1093, Use of Funds, would delineate acceptable programs and activities that may be funded.

Proposed new 19 TAC §61.1094, Exceptions for Alternative Uses of Funds, would establish that eligible school districts will

be identified that may receive exceptions for alternative uses of the funds.

Proposed new 19 TAC §61.1095, Allowable Expenditures, would identify allowable expenditures, including textbooks and professional development, for example.

Proposed new 19 TAC §61.1096, Unallowable Expenditures, would identify indirect or administrative costs or athletics as unallowable expenditures.

Proposed new 19 TAC §61.1097, Additional High School Completion and Success Initiatives Approved by the Commissioner, would establish procedures for submitting initiatives for commissioner approval for uses other than those specified.

Proposed new 19 TAC §61.1098, Policy Advisory Group, would describe the composition and role of an advisory group that would review activities and programs implemented with high school allotment funds and make recommendations to the commissioner.

Proposed new 19 TAC §61.1099, School District Annual Performance Review, would set forth requirements relating to local school district establishment and continuation of annual performance goals for programs, activities, and strategies implemented with high school allotment funds.

Proposed new 19 TAC §61.1100, Evaluation of Programs, would describe the TEA evaluation of programs implemented with high school allotment funding.

Proposed new 19 TAC §61.1101, Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Programs, would describe the process and standards for selecting recognized districts and campuses. The proposed new section would also specify that recognition methods would be established by the commissioner.

Districts will report the use of these funds in the same manner as other allotments using separate accounting to enable the TEA to report back to the Legislature on the effectiveness of the allotment.

Stakeholder meetings and forums were held and input received during the development of the proposed new sections. These meetings include the June 7 - 8, 2006, meeting with the Texas Association of Secondary School Principals; the June 26 - 27, 2006, summer conference of the University of Texas/Texas Association of School Administrators; and the July 20, 2006, public stakeholder meeting.

Christi Martin, Senior Advisor in the Office of Education Initiatives, has determined that for the first five-year period the new sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the new sections. The proposed new sections implementing HB 1 provide a high school allotment of $275 for each student in average daily attendance in Grades 9-12. This cost is included in the current appropriations. The estimated expenditure for the state for fiscal year 2007 is $318,565,150 with an estimated increase of approximately 2.2% per year for each of the next five years.

Ms. Martin has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be the provision of financial support and guidance to districts and charter schools. This program is expected to: (1) increase the percentage of students graduating from high school, (2) increase enrollment in advanced courses, (3) increase the percentage of students successfully graduating on the Recommended High School Program and Distinguished Achievement Program, and (4) increase the percentage of students who achieve the higher education readiness component qualifying scores on both the English language arts and the mathematics sections of the exit-level Texas Assessment of Knowledge and Skills. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

The public comment period on the proposal begins August 18, 2006, and ends September 17, 2006. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code (TEC), §39.113(b), which authorizes the commissioner to adopt rules for the administration of programs for recognition of high school completion and success and college readiness, §39.114(d), which authorizes the commissioner to adopt rules to administer provisions relating to high school allotment funds, and §42.2516(k), which authorizes the commissioner to adopt rules necessary to administer provisions relating to additional state aid for tax reduction.

The new sections implement the Texas Education Code, §§39.113, 39.114, and 42.2516.

§61.1091. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academically rigorous course work--Academically rigorous course work is an academically intense and high-quality program of study that provides students with the information and skills necessary to successfully enroll in entry-level courses at an institution of higher education without the need for developmental course work. Academically rigorous coursework includes four years of math and four years of science at the high school level.

(2) Advanced academic opportunity--An advanced academic opportunity includes the following:

(A) advanced courses, such as College Board advanced placement and International Baccalaureate courses, and others as defined in §74.30 of this title (relating to Identification of Advanced Courses), with the exception of the Social Studies Advanced Studies;

(B) dual enrollment courses for which students receive both high school and college credit, as limited by §74.25 of this title (relating to High School Credit for College Courses);

(C) an original research/project as defined by §74.54 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program) or by §74.64 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program); and

(D) advanced technical credit courses.

(3) College readiness program--A college readiness program is any program, activity, or strategy designed to do either of the following:

(A) increase the number of students who are academically prepared to enroll in entry-level courses at institutions of higher education without the need for developmental course work; or

(B) increase the number of students who enroll in institutions of higher education.

(4) Developmental course work--As defined in §4.53 of this title (relating to Definitions), developmental course work refers to non-degree-credit course work designed to address a student's deficiencies.

(5) High school allotment--The high school allotment refers to funds allocated under the Texas Education Code (TEC), §42.2516(b)(3).

(6) High school completion and success initiative--A high school completion and success initiative is any program, activity, or strategy designed to do the following:

(A) improve student achievement in high school; and

(B) increase the number of students who graduate from high school.

(7) Institution of higher education--An institution of higher education is any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in the TEC, §61.003.

(8) School district--For the purposes of this subchapter, an open-enrollment charter school is considered a school district.

§61.1092. Payment of the High School Allotment.

(a) In accordance with the Texas Education Code (TEC), Chapter 42, Subchapter E, the Texas Education Agency (TEA) shall distribute funds to school districts for the purpose of payment of the high school allotment, as specified by the provisions in this subchapter.

(b) Each school district shall provide to the TEA an estimate of student enrollment for Grades 9-12 for the school district in a manner established by the commissioner of education.

(c) High school allotment funds shall be distributed to each school district as a part of regularly scheduled state aid payments according to the district's Foundation School Program payment schedule.

(d) School districts shall account for the receipt and expenditure of funds distributed under the TEC, §42.2516(b)(3), in accordance with §109.41 of this title (relating to Financial Accountability System Resource Guide). Specific procedures for reporting the receipt and expenditure of high school allotment funds may be established by the commissioner.

§61.1093. Use of Funds.

In accordance with the Texas Education Code, §39.114(a), high school allotment funds may be spent on the following, which, unless otherwise noted, shall be targeted toward Grades 9-12:

(1) programs that provide underachieving students with the following:

(A) instruction in study skills for success in college level work;

(B) academic and community support for success in college preparatory classes; and

(C) information about and access to college and financial aid;

(2) activities designed to increase the number of students who take preparatory college entrance examinations and college entrance examinations;

(3) programs that increase the number of students who enroll and succeed in College Board advanced placement courses and International Baccalaureate courses;

(4) programs that increase the number of students who take College Board advanced placement examinations and International Baccalaureate examinations;

(5) programs that expand participation in dual enrollment or concurrent enrollment courses;

(6) activities designed to increase access for underachieving students to college and financial aid;

(7) activities designed to create a college-going culture within a district or on a campus;

(8) early college high school programs that provide at-risk students and other students with the opportunity to graduate from high school with an associate's degree or 60 hours of credit toward a baccalaureate degree;

(9) programs that provide academic support and instruction to increase the number of students who complete the Recommended High School Program or the Distinguished Achievement Program as defined in Chapter 74, Subchapter E, of this title (relating to Graduation Requirements, Beginning with School Year 2004-2005), or Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008);

(10) strategies that create small learning communities, advocacy programs, or advisory programs for students;

(11) programs or activities that create individualized high school graduation and postsecondary plans for students;

(12) programs that ensure that students have access to rigorous curriculum, effective instruction, and timely formative assessment;

(13) programs that create opportunities for middle and high school educators and college and university faculty to jointly identify college and secondary curricular requirements and expectations and develop means to align these requirements and expectations;

(14) summer transition programs and other programs that provide academic support and instruction for students entering Grade 9; and

(15) other high school completion and success initiatives as approved by the commissioner of education.

§61.1094. Exceptions for Alternative Uses of Funds.

In accordance with the Texas Education Code (TEC), §39.114(b), before the beginning of the 2008-2009 school year, the commissioner of education shall identify school districts that are eligible for exceptions for alternative uses of high school allotment funds.

§61.1095. Allowable Expenditures.

(a) A school district may use high school allotment funds to support a program or activity that is currently in place in the district or on a campus, provided that the program satisfies at least one of the permissible uses of funds identified in the Texas Education Code (TEC), §39.114(a), and further defined in §61.1093 of this title (relating to Use of Funds).

(b) A school district may spend high school allotment funds on the following, provided these items are for uses identified in the TEC, §39.114(a), and further defined in §61.1093 of this title:

(1) tuition and fees;

(2) textbooks and other instructional materials;

(3) transportation;

(4) equipment, including science laboratory equipment;

(5) technology;

(6) parent and community involvement and outreach;

(7) professional development;

(8) technical assistance services;

(9) performance reward and incentive programs for students;

(10) personnel costs, including salaries and benefits;

(11) stipends and extra-duty pay; and

(12) performance reward and incentive programs established in district policy or employment contracts.

(c) School districts may pool high school allotment funds to implement multi-district programs for the uses of funds identified in the TEC, §39.114(a), and further defined in §61.1093 of this title.

§61.1096. Unallowable Expenditures.

A school district may not spend high school allotment funds on indirect or administrative costs or athletic programs.

§61.1097. Additional High School Completion and Success Initiatives Approved by the Commissioner.

(a) In order to implement high school completion and success initiatives for students in Grades 6-12 other than those programs, activities, and strategies identified for Grades 6-12 in the Texas Education Code (TEC), §39.114(a), or further defined in §61.1093 of this title (relating to Use of Funds), a school district must apply to the Texas Education Agency (TEA), by a date set by the commissioner of education. The application must include a standard application as required by the TEA division responsible for approving high school completion and success initiatives under this subchapter. No application is needed to implement programs in accordance with §61.1093 of this title.

(b) The TEA shall review and consider approval of applications submitted under this section.

(c) The TEA may consider criteria that include, but are not limited to, the following when determining whether to approve an application:

(1) indications that the initiative will improve student performance in relation to the performance indicators established in §61.1099 of this title (relating to School District Annual Performance Review);

(2) evidence that activities under the initiative address the needs of the target population participating in the initiative;

(3) indications that the design of the initiative reflects up-to-date knowledge about high school completion and success and/or college readiness and effective practices;

(4) the qualifications, experience, or certifications of personnel or external consultants involved in the initiative; and

(5) the appropriateness of proposed expenditures.

(d) A school district that receives approval from the TEA to implement a high school completion and success initiative under this section may be required to re-apply for approval each year.

(e) The TEA may identify specific programs, activities, and strategies that are approved for use in the expenditure of high school allotment funds in addition to those identified in the TEC, §39.114(a), or further defined in §61.1093 of this title.

§61.1098. Policy Advisory Group.

(a) The commissioner of education may create an advisory group composed of stakeholders, including the following:

(1) representatives from school districts;

(2) representatives from institutions of higher education;

(3) experts with high school completion and success and college readiness experience; and

(4) other interested stakeholders.

(b) The advisory group may review activities and programs implemented with high school allotment funds and make recommendations to the commissioner regarding the following:

(1) standards for evaluating the success and cost-effectiveness of high school completion and success and college readiness programs implemented with high school allotment funds;

(2) criteria for identifying and disseminating promising practices and strategies; and

(3) guidance for school districts and campuses in establishing and improving high school completion and success and college readiness programs implemented with high school allotment funds.

(c) If requested by the commissioner, the advisory group shall make recommendations regarding standards for selecting and methods for recognizing school districts and campuses with exceptional high school completion and success and college readiness programs implemented with high school allotment funds.

§61.1099. School District Annual Performance Review.

(a) At a public hearing of the board of trustees, each school district shall establish annual performance goals for programs, activities, and strategies implemented with high school allotment funds related to the following performance indicators:

(1) percentage of students graduating from high school;

(2) enrollment in advanced courses, including College Board advanced placement courses, International Baccalaureate courses, and dual or college credit courses;

(3) percentage of students successfully graduating on the Recommended High School Program or Distinguished Achievement Program described in Chapter 74, Subchapter E, of this title (relating to Graduation Requirements, Beginning with School Year 2004-2005), or Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008);

(4) percentage of students who achieve the higher education readiness component qualifying scores on the English language arts section of the exit-level Texas Assessment of Knowledge and Skills (TAKS); and

(5) percentage of students who achieve the higher education readiness component qualifying scores on the mathematics section of the exit-level TAKS.

(b) Annually, each school district shall review its progress in relation to the performance indicators specified in subsection (a) of this

section. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(c) Each school district shall ensure that decisions about the continuation or establishment of programs, activities, and strategies implemented with high school allotment funds are based on:

(1) state assessment results and other student performance data;

(2) standards for success and cost-effectiveness as established by the commissioner of education in accordance with the Texas Education Code (TEC), §39.113(a)(1); and

(3) guidance for improving high school completion and success and college readiness programs as established by the commissioner in accordance with TEC, §39.113(a)(2).

§61.1100. Evaluation of Programs.

(a) The Texas Education Agency (TEA) shall evaluate programs implemented with high school allotment funds based on the following:

(1) performance indicators as established in §61.1099 of this title (relating to School District Annual Performance Review); and

(2) standards for success and cost-effectiveness as established by the commissioner in accordance with the Texas Education Code (TEC), §39.113(a)(1).

(b) In addition to the evaluation on the indicators identified in subsection (a) of this section, school districts shall be evaluated based on the academic quality indicators in the TEA's performance-based monitoring system and other compliance requirements.

§61.1101. Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Programs.

(a) In accordance with the Texas Education Code (TEC), §39.113(a)(3), by January 1 of each year, beginning in 2008, the commissioner of education shall select for recognition districts and campuses that offer exceptional high school completion and success and college readiness programs implemented with high school allotment funds.

(b) The standards for selecting school districts and campuses with exceptional high school completion and success and college readiness programs shall be established by the commissioner of education.

(c) The standards for selection shall be based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status. Standards for selection shall include consideration of district and campus performance in relation to the following:

(1) performance indicators as established in §61.1099 of this title (relating to School District Annual Performance Review);

(2) standards for success and cost-effectiveness as established by the commissioner in accordance with the TEC, §39.113(a)(1); and

(3) district or campus improvement relative to districts and campuses that exhibit similar characteristics of students served by the campus or district, including, but not limited to, past academic performance, socioeconomic status, ethnicity, and limited English proficiency.

(d) The methods for recognizing school districts and campuses that offer exceptional high school completion and college readiness programs implemented with high school allotment funds shall be established by the commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604043
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING GOVERNOR'S EDUCATOR EXCELLENCE AWARD PROGRAMS

19 TAC §102.1071

The Texas Education Agency (TEA) proposes new §102.1071, concerning the Governor's Educator Excellence Award Program--Texas Educator Excellence Grant. The proposed new section would implement the requirements of the Texas Education Code (TEC), Subchapter N, as added by House Bill 1, 79th Texas Legislature, Third Called Session, that requires the commissioner to, by rule, establish procedures and adopt guidelines for the administration of the awards for the student achievement program.

House Bill 1, 79th Texas Legislature, Third Called Session, added the TEC, Subchapter N, establishing a program whereby classroom teachers and other campus personnel may receive an incentive award from an eligible campus through the student achievement program. The legislation requires that the commissioner establish the grant award program and adopt rules for developing a campus incentive plan and the awarding of funds.

Proposed new 19 TAC §102.1071 would implement this new legislation by establishing the Governor's Educator Excellence Award Program--Texas Educator Excellence Grant. The new section proposes provisions that would: (1) prescribe a procedure that a school district and open-enrollment charter school must follow to apply for and receive funding on behalf of an eligible campus for the grant program under this section; (2) establish guidelines for determining which campuses are eligible to receive funding; (3) provide guidelines by which a campus will submit to the agency an incentive plan developed by a campus-level decision-making body and with significant classroom teacher involvement; and (4) stipulate the manner in which incentive payments are allocated to classroom teachers and other eligible campus employees.

At least 75% of the total award must be used to provide incentives to classroom teachers who have both demonstrated success in improving student performance using objective, quantifiable measures and who have collaborated with faculty and staff to contribute to improving overall student performance on the campus. The remaining 25% of the award must be used to fund other activities which may include incentives for other school personnel, professional development for classroom teachers who did not receive an incentive payment, teacher mentoring support, recruitment and retention of highly-qualified teachers, teacher stipends, and other programs that have been proven to directly

contribute to improved student achievement. Grant funds may not be used for an employee whose primary responsibility is supervision of an athletic activity.

The proposed new section would provide guidelines and procedures for campuses, open-enrollment charter schools, and school districts to follow in order to apply for the Governor's Educator Excellence Award Program--Texas Educator Excellence Grant. Grantees must agree to submit all information, application materials, and reports required by the TEA.

Christi Martin, Senior Advisor in the Office of Education Initiatives, has determined that for the first five-year period the new section is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the new section. The proposed new section would allow the TEA to award grants from funds appropriated for the program beginning with the 2006-2007 school year and may not exceed $100 million in the 2006-2007 school year, except as expressly authorized by the General Appropriations Act or other law. To the extent practicable, the campus shall pay a classroom teacher an incentive payment in an amount of not less than $3,000 or more than $10,000. In fiscal year 2006, $155,000 has been set aside from agency administrative funds for TEA's eGrants planning, design, and implementation. In fiscal year 2006 through fiscal year 2009, $140,000 has been set aside from agency administrative funds for each year to fund personnel to administer the grant program.

Ms. Martin has determined that for each year of the first five years the new section is in effect the student benefit anticipated as a result of enforcing the new section will be the positive impact the program will have on classroom teaching by rewarding classroom teachers and other school personnel for success in improving student performance, and for collaborating with faculty and staff to contribute to improving overall student performance on the campus. Improving education for the school children of Texas will prepare them for success in the future and create a more highly educated and prepared workforce. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

The public comment period on the proposal begins August 18, 2006, and ends September 17, 2006. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code (TEC), §21.652 and §21.658, which authorize the commissioner to, by rule, establish procedures and adopt guidelines for the administration of the awards for the student achievement program.

The new section implements the Texas Education Code, §§21.652 - 21.658.

§102.1071. Governor's Educator Excellence Award Program--Texas Educator Excellence Grant.

(a) Establishment of program.

(1) In accordance with the Texas Education Code (TEC), §21.652, the Governor's Educator Excellence Award Program--Texas Educator Excellence Grant is established as an annual grant program under which a district or open-enrollment charter school may receive a grant on behalf of an eligible campus as an award for student achievement. Provisions regarding implementation of the program are described in this section.

(2) Funds from this program will be distributed to a district or open-enrollment charter school, on behalf of an eligible campus, that submitted an approved campus incentive plan developed in accordance with the TEC, §21.654, and subsection (c) of this section.

(b) Campus eligibility.

(1) Campus eligibility shall be determined in accordance with the TEC, §21.653.

(2) Each year of the grant, a new list of eligible campuses will be published by the Texas Education Agency (TEA). Academically Unacceptable campuses will not be included on this list. Campuses may be eligible to receive this grant multiple times.

(3) Campuses receiving the Governor's Educator Excellence Grant established by the Governor's Executive Order RP 51 in 2005 are ineligible to receive the award described in this section until June 1, 2009.

(c) Campus incentive plan.

(1) As delineated in the TEC, §21.654, a campus incentive plan must be:

(A) developed by each campus-level decision-making body;

(B) approved by its district-level committee; and

(C) submitted by a district on behalf of an eligible campus.

(2) The campus-level body developing the plan should be composed of individuals representing a diverse and broad mix of teachers, including representation from different grade levels and subject areas.

(3) The district may choose to provide guidance to campuses in the creation of plans.

(4) The TEA may consider for approval only a campus incentive plan developed, approved, and submitted in accordance with the TEC, §21.654, and this section.

(5) A campus that has implemented an approved incentive plan may choose to renew its plan, should it be eligible for funding in subsequent years, for up to three years after the first year of implementation.

(d) Amount of program award.

(1) In accordance with the TEC, §21.655, each eligible campus whose campus incentive plan is approved is entitled to a grant award in an amount determined by the commissioner of education.

(2) Award amounts may vary from one year to the next.

(e) Incentive payments to classroom teachers.

(1) An eligible campus must distribute a specified percentage of its program grant award to classroom teachers in accordance with the TEC, §21.656.

(2) All funds must be used to provide incentives not previously funded with state, local, or federal funds.

(3) Incentives awarded under this subsection may be used only for classroom teachers. For the purposes of this subsection, the term "classroom teacher" is defined as "an educator who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting." For the purposes of this subsection, the definition of the term "classroom teacher" does not include a teacher's aide or a full-time administrator.

(4) As specified in the TEC, §21.656, and further delineated in this subsection, an eligible campus receiving program funds may distribute an incentive payment only to a classroom teacher who:

(A) demonstrates success in improving student achievement. Measures determining a classroom teacher's success in improving student performance must allow for program administrators to evaluate teacher impact on student achievement; and

(B) successfully collaborates with faculty and staff to contribute to improving overall student performance on the campus. The collaboration must be measured using campus-based activities. Participation in tutoring sessions or personal-planning periods is not a sufficient measure of collaboration.

(f) Distribution of other program funds.

(1) An eligible campus must distribute a specified percentage of its program grant award to employees other than classroom teachers in accordance with the TEC, §21.657.

(2) An eligible campus receiving programs funds must use funds for some or all of the 14 provisions specified in the TEC, §21.657, when distributing incentive payments. Additional details about three of these provisions are provided in this subsection.

(A) Stipends paid for teachers to participate in after-school or Saturday programs, as specified in the TEC, §21.657(a)(10), must be used to supplement not supplant.

(B) Stipends paid for teachers who hold a postgraduate degree, as specified in the TEC, §21.657(a)(12), must be for a postgraduate degree that will improve instructional abilities, excluding education administration, mid-management certification, and superintendency certification. These stipends must be used to supplement not supplant.

(C) Extending funding to feeder campuses, as outlined in the TEC, §21.657(a)(13), must be to implement an activity described in the TEC §21.657. The student population of the feeder campus shall not be used to determine campus award eligibility or the award amount.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604044
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 129. OPTICIANS' REGISTRY

25 TAC §§129.1, 129.2, 129.4, 129.5, 129.7 - 129.13

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§129.1, 129.2, 129.4, 129.5 and 129.7 - 129.13, concerning the voluntary registration and regulation of opticians.

BACKGROUND AND PURPOSE

The proposed amendments implement requirements adopted by the 79th Texas Legislature, Regular Session (2005), House Bill (HB) 2680, located in Occupations Code, Chapter 112, relating to reduced fees and continuing education requirements for retired health professionals, including voluntarily registered opticians engaged in the provision of voluntary charity care. The amendments also implement Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 129.1, 129.2, 129.4, 129.5 and 129.7 - 129.13 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

An amendment to §129.1 reflects a clarification to add the word "registered". Amendments to §129.2 reflect changes to the department's name, the abolishment of the "Board of Health"; and the addition of "Executive Commissioner". The section has also been renumbered to reflect deletions and insertions. Amendments to §129.4 reflect the new reduced fee for renewal for a retired optician providing voluntary charity care required by HB 2680 of $50 (for a retired optician holding one registration) and $80 (for a retired optician holding a dual registration) for each two-year renewal. Amendments to §§129.4, 129.5, 129.7, and 129.10 - 129.12 reflect changes to the department's name. Amendments to §129.8 reflect the renewal requirements for a retired optician providing voluntary charity care required by HB 2680. Amendments to §129.9 reflect the reduced continuing education requirements for a retired optician providing voluntary charity care required by HB 2680. Amendments to §129.13 reflect changes to the department's name and wording changes related to prescription verification.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each year of the first five-year period that the sections are in effect, there will be minimal fiscal implications to state or local government as a result of enforcing or administering the sections as proposed. The impact of the possible decrease in renewal fees collected due to the implementation of reduced renewal fees for retired opticians over the age of 55 providing voluntary charity care is insignificant due to the small population of retired registered opticians anticipated to provide charity care services.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This determination was made because the amendments implement Federal laws which are already in effect. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the voluntary registration and regulation of opticians.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the pubic health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Program Director, Opticians' Registry, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-4521 or by email to Yvonne.Feinleib@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, Chapter 352; and Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 352, and Health and Safety Code, Chapters 12 and 1001; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039.

§129.1. Purpose and Construction.

(a) Purpose. This chapter implements the provisions of the Opticians' Registry Act, Texas Occupations Code, Chapter 352, concerning the voluntary registration and regulation of dispensing opticians by providing a means by which the public can identify registered providers of ophthalmic dispensing services and products that meet minimum standards of competence.

(b) (No change.)

§129.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

~~[(4) Board--The Texas Board of Health.]~~

(4) [~~(5)~~] Commissioner--The commissioner of the [~~Texas~~] Department of State Health Services.

(5) [~~(6)~~] Consumer--An individual receiving services or obtaining a product from a registered dispensing optician.

(6) [~~(7)~~] Contact lens dispensing--The fabrication, ordering, mechanical adjustment, dispensing, sale, and delivery to the consumer of contact lenses prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist, together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea or evaluating the physical fit of the contact lenses, unless that action is directed or approved by a licensed physician.

(7) [~~(8)~~] Contact lens prescription--A written specification by a licensed physician or optometrist for therapeutic, corrective, or cosmetic contact lenses that states the refractive power of the product and other information as required by:

(A) the physician or the Texas [~~State Board of~~] Medical Board [~~Examiners~~]; or

(B) the optometrist or the Texas Optometry Board.

(8) [~~(9)~~] Department--The [~~Texas~~] Department of State Health Services.

(9) [~~(10)~~] Dispensing optician--A person who provides or offers to provide spectacle or contact lens dispensing services or products to the public.

(10) [~~(11)~~] Dual application--An application by one person as both a registered spectacle dispensing optician and a registered contact lens dispenser.

(11) [~~(12)~~] Examination--A qualifying test administered to eligible applicants by the department or its designee.

(12) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(13) - (17) (No change.)

§129.4. Fees.

(a) Schedule of fees. The fees are as follows:

(1) - (2) (No change.)

(3) registration renewal fee;

(A) - (B) (No change.)

(C) for a retired optician registration issued for two years--$50;

(4) dual registration renewal fee;

(A) - (B) (No change.)

(C) for a retired optician registration issued for two years--$80;

(5) - (6) (No change.)

(7) examination fee--the then current fee assessed by the [~~Texas~~] Department of State Health Services' [~~Health's~~] (department's) designee for the examination.

(b) Payment of fees. If paid by mail, all fees shall be submitted in the form of a personal check, certified check for guaranteed funds or a money order made payable to the [~~Texas~~] Department of State Health Services. If submitted in person, cash may be accepted by the department's cashier.

(c) - (e) (No change.)

§129.5. Application Procedures and Requirements for Registration.

(a) (No change.)

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official [~~Texas~~] Department of State Health Services (department) forms.

(2) - (4) (No change.)

(c) - (f) (No change.)

§129.7. Issuance of Certificate of Registration.

(a) Issuance of certificate. The [~~Texas~~] Department of State Health Services (department) shall issue a certificate of registration and a registration identification card containing a registration number and expiration date to each qualified applicant.

(b) - (h) (No change.)

§129.8. Renewal of Registration.

(a) (No change.)

(b) General.

(1) - (2) (No change.)

(3) Each registrant is responsible for renewing the registration certificate before the expiration date indicated on the face of the certificate and shall not be excused from paying the late registration fee. Failure to receive notification from the [~~Texas~~] Department of State Health Services (department) prior to the expiration date of the registration certificate will not excuse failure to apply for renewal or late renewal.

(4) - (7) (No change.)

(c) - (e) (No change.)

(f) A retired registrant who wishes to use the titles authorized by §129.7(g) of this title (relating to Issuance of Certificate of Registration), only in the provision of voluntary charity care, may renew the registration every two years by submitting the renewal form and the retired optician registration renewal fee in accordance with the renewal procedures described in this section. Voluntary charity care means engaging in the practice of contact lens dispensing and/or spectacle dispensing at no cost to the consumer.

§129.9. Requirements for Continuing Education.

(a) Purpose. The purpose of this section is to establish the continuing education requirements a registrant shall meet to maintain registration. The requirements are intended to maintain and improve the quality of services provided to the public by registered spectacle dispensing opticians and registered contact lens dispensers. Continuing education credit includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of dispensing opticians, thus improving health care to the public. The [~~Texas~~] Department of State Health Services (department) assumes dispensing opticians will maintain the high standards of the profession in selecting quality educational programs to fulfill the continuing education requirements.

(b) - (e) (No change.)

(f) Reduced hours required for retired opticians providing voluntary charity care. A retired registered optician renewing under §129.8(f) of this title (relating to Renewal of Registration) is required to complete one-half of the hours regularly required for registration renewal.

§129.10. Change of Name or Address.

(a) (No change.)

(b) The registrant shall notify the [~~Texas~~] Department of State Health Services (department) of changes in name, preferred mailing address, or place of business or employment within 30 days of such change.

(c) - (d) (No change.)

§129.11. Violations, Complaints, Investigation of Complaints, and Disciplinary Actions.

(a) Purpose. The purpose of this section is to set out:

(1) (No change.)

(2) [~~Texas~~] Department of State Health Services (department) actions against a person when violations have occurred.

(b) (No change.)

(c) Filing of complaints.

(1) (No change.)

(2) A person wishing to file a complaint against a registered dispensing optician or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office. The mailing address is Opticians' Registry, [~~Texas~~] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3183.

(3) - (4) (No change.)

(d) - (g) (No change.)

§129.12. Registration of Applicants with Criminal Backgrounds.

(a) (No change.)

(b) Criminal convictions which directly relate to the occupation of dispensing opticians shall be considered by the [~~Texas~~] Department of State Health Services (department) as follows.

(1) - (2) (No change.)

(c) (No change.)

§129.13. Professional and Ethical Standards.

(a) - (b) (No change.)

(c) A registrant shall not provide any information that is false, deceptive, or misleading to the [~~Texas~~] Department of State Health Services (department).

(d) - (k) (No change.)

(l) A registrant may not sell, deliver, or dispense contact lenses to a patient or other consumer in this state unless the registrant receives or verifies a prescription that conforms to the requirements of the Texas Contact Lens Prescription Act, Texas Occupations Code, Chapter 353. The registrant must fill the prescription accurately without modification.

(m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 3, 2006.

TRD-200604026
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), proposes amendments to §229.182, concerning licensure of food manufacturers, food wholesalers, and warehouse operators, and §§229.435, 229.439, 229.441, 229.443, and 229.444, concerning licensing of device distributors and manufacturers.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in these amendments.

Programs with regulatory authority over food manufacturers, food wholesalers, and warehouse operators; and device distributors and manufacturers, were evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

Finally, the sections require updating to be consistent with changes resulting from House Bill 2292, 78th Legislative Session, 2003. The amendments update and clarify the sections to reflect current licensing procedures and license term durations as well as identification of the state agencies responsible for certain licensing, enforcement and advisory committee functions.

SECTION-BY-SECTION SUMMARY

Amendments to §229.182 contain increases in licensing fees for food wholesalers with combination products for initial and renewal applications per location, based upon gross annual sales. Specifically, new §229.182(b)(3)(A) increases the license fee for wholesalers of combination products with gross annual sales of $0.00 - $199,999.99 by $120 for a two-year term; new §229.182(b)(3)(B) increases the license fee for wholesalers of combination products with gross annual sales of $200,000.00 - $499,999.99 by $180 for a two-year term; new §229.182(b)(3)(C) increases the license fee for wholesalers of combination products with gross annual sales of $500,000.00 - $999,999.99 by $240 for a two-year term; new §229.182(b)(3)(D) increases the license fee for wholesalers of combination products with gross annual sales of $1 million - $9,999,999.99 by $300 for a two-year term; and new §229.182(b)(3)(E) increases the license fee for wholesalers of combination products with gross annual sales of greater than or equal to $10 million by $450 for a two-year term.

Amendments to §229.435 remove the reference to one-year license fees changing the reference to two years, and correctly identify the responsible licensing agency as the Department of State Health Services.

Amendments to §229.439 contain increases in fees for device distributor licenses and renewal licenses for distributors with combination products. Amendments to §229.439(a)(1)(A) - (C) remove references to two-year fees related to minor changes within the licensure period. Specifically, §229.439(a)(2)(A) increases the license fee for distributors with gross annual sales of $0 - $199,999.99 by $120 for a two-year term; §229.439(a)(2)(B) increases the license fee for distributors with gross annual sales of $200,000 - $499,999.99 by $180 for a two-year term; §229.439(a)(2)(C) increases the license fee for distributors with gross annual sales of $500,000 - $999,999.99 by $240 for a two-year term; §229.439(a)(2)(D) increases the license fee for distributors of combination productions with gross annual sales of $1 million - $9,999,999.99 by $300 for a two-year term; §229.439(a)(2)(E) increases the license fee for distributors of combination products with gross annual sales of greater than or equal to $10 million by $450 for a two-year term. Amendments to §229.439(a)(3) add a statement about late fees and remove references to two-year fees related to minor changes within the licensure period.

Amendments to §229.441 correctly reflect that the device-related policies of the U.S. Food and Drug Administration are also the policies of the Department of State Health Services. In addition, the amendments recognize that the Executive Commissioner of the Health and Human Services Commission is responsible for any modification or rejection of rules relating to device labeling exemptions adopted under the Federal Food, Drug and Cosmetic Act. References to the "Board of Health" were removed and replaced with "Executive Commissioner of the Health and Human Services Commission" due to the abolishment of the board.

Amendments to §229.443 and §229.444 correctly reflect that the agency responsible for certain enforcement actions with respect to adulterated and misbranded devices is the Department of State Health Services and that the Executive Commissioner of the Health and Human Services Commission is responsible for oversight of the functions and duties of the Device Distributors and Manufacturers Advisory Committee. Changes were made due to agency name changes and the abolishment of the Board of Health.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. Section 229.182 will provide an increase in revenue to the state of $29,100 for Fiscal Years 2007 through 2011. The affect of §229.439 on state government will be an increase in revenue to the state of $71,910 for Fiscal Years 2007 through 2011. Sections 229.435, 229.431, 229.433 and 229.444 do not contain any fiscal implications.

These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed.

There will be an increase of 30% in the §229.182 and §229.439 licensing fees for businesses or persons operating as food wholesalers with combination products or as device distributors with combination products. The probable economic cost to persons required to comply with the sections as proposed will be an increase in license fees from $120 - $450 for the two-year term of the license. Sections 229.435, 229.441, 229.443 and 229.444 will not affect costs to small businesses, micro-businesses, or persons required to comply with these sections as proposed.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections.

The public benefit anticipated as a result of enforcing or administering §229.182 is to generate funding to operate the program to ensure the safety of foods manufactured, stored and distributed to the public.

The public benefit anticipated as a result of enforcing or administering §229.439 is to generate funding to operate the program to continue enforcement of the minimum standards for device distributors and manufacturers, ensuring these medical products are safe and effective for use by the public and consumers. The public benefits for §§229.435, 229.441, 229.443 and 229.444 are continued enforcement of the minimum standards for device distributors and manufacturers, ensuring these medical products are safe and effective for use by the public and consumers.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the pubic health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal regarding §229.182 may be submitted to Julie Loera, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6670, extension 2145, or by e-mail to Julie.Loera@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

Comments on the proposal concerning §§229.435, 229.439, 229.441, 229.443, and 229.444 may be submitted to Tom Brinck, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6755, extension 2388, or by e-mail to Tom.Brinck@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER L. LICENSURE OF FOOD MANUFACTURERS, FOOD WHOLESALERS, AND WAREHOUSE OPERATORS

25 TAC §229.182

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §§431.204, 431.222, and 431.276 which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendment affects the Health and Safety Code, Chapters 431 and 1001; and Government Code, Chapter 531.

§229.182. Licensing/Registration Fee and Procedures.

(a) (No change.)

(b) Licensing and registration fees.

(1) - (2) (No change.)

(3) Wholesaler with combination products. A person who is required to be licensed as a food wholesaler under this section and who is also required to be licensed as a wholesale distributor of drugs under §229.252(a)(1) of this title or as a device distributor under §229.439(a)(1) of this title shall pay a combined licensure fee for each place of business. The licensure fee shall be based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices).

(A) For each place of business having combined gross annual sales of $0.00 - $199,999.99, the fees are:

(i) $520 [~~$400~~] for a two-year license;

(ii) $520 [~~$400~~] for a two-year license that is amended due to a change of ownership; and

(iii) $260 [~~$200~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(B) For each place of business having combined gross annual sales of $200,000 - $499,999.99, the fees are:

(i) $780 [~~$600~~] for a two-year license;

(ii) $780 [~~$600~~] for a two-year license that is amended due to a change of ownership; and

(iii) $390 [~~$300~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(C) For each place of business having combined gross annual sales of $500,000 - $999,999.99, the fees are:

(i) $1,040 [~~$800~~] for a two-year license;

(ii) $1,040 [~~$800~~] for a two-year license that is amended due to a change of ownership; and

(iii) $520 [~~$400~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(D) For each place of business having combined gross annual sales of $1 million - $9,999,999.99, the fees are:

(i) $1,300 [~~$1,000~~] for a two-year license;

(ii) $1,300 [~~$1,000~~] for a two-year license that is amended due to a change of ownership; and

(iii) $650 [~~$500~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(E) For each place of business having combined gross annual sales greater than or equal to $10 million, the fees are:

(i) $1,950 [~~$1,500~~] for a two-year license;

(ii) $1,950 [~~$1,500~~] for a two-year license that is amended due to a change of ownership; and

(iii) $975 [~~$750~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(4) - (9) (No change.)

(c) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604027
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER X. LICENSING OF DEVICE DISTRIBUTORS AND MANUFACTURERS

25 TAC §§229.435, 229.439, 229.441, 229.443, 229.444

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §§431.204, 431.222, and 431.276 which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Health and Safety Code, Chapters 431 and 1001; and Government Code, Chapter 531.

§229.435. Licensure Requirements.

(a) General. Except as provided by §229.434 of this title (relating to Exemptions), a person may not engage in the distribution or manufacture of devices in Texas unless the person has a valid license from the Commissioner of the Department of State Health Services (commissioner) for each place of business.

(b) - (c) (No change.)

(d) New place of business. Each person acquiring or establishing a place of business for the purpose of device distribution or manufacturing after the effective date of these sections shall apply to the Department of State Health Services [~~Texas Department of Health~~] (department) for a license of such business prior to beginning operation.

(e) - (g) (No change.)

(h) License term. Unless the license is amended as provided in subsection (j) of this section or revoked or suspended as provided in §229.440 of this title (relating to Refusal, Cancellation, Suspension, or Revocation of a License), the license is valid for two years [~~one or two years as determined by the department~~].

(i) - (m) (No change.)

§229.439. Licensure Fees.

(a) License fee.

(1) No person may operate or conduct business as a device distributor without first obtaining a license from the department. All applicants for a device distributor license or a renewal license shall pay a licensing fee. All fees are nonrefundable. Licenses are issued for two-year terms. A license shall only be issued when all past due fees and delinquency fees are paid. License fees are based on gross annual device sales.

(A) For a distributor with gross annual device sales of $0 - $499,999.99, the fees are:

(i) - (ii) (No change.)

(iii) $240 for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(B) For a distributor with gross annual device sales of $500,000 - $9,999,999.99, the fees are:

(i) - (ii) (No change.)

(iii) $540 for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(C) For a distributor with gross annual device sales greater than or equal to $10 million, the fees are:

(i) - (ii) (No change.)

(iii) $840 for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(2) A person who is required to be licensed as a device distributor under this section and who is also required to be licensed as a wholesale drug distributor under §229.252(a)(1) of this title (relating to Licensing Fee and Procedures) or as a wholesale food distributor under §229.182(a)(3) of this title (relating to Licensing Fee and Procedures) shall pay a combined licensure fee for each place of business. All fees are nonrefundable. Licenses are issued for two-year terms. A license shall only be issued when all past due fees and delinquency fees are paid. License fees are based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices).

(A) For each place of business having combined gross annual sales of $0 - $199,999.99, the fees are:

(i) $520 [~~$400~~] for a two-year license;

(ii) $520 [~~$400~~] for a two-year license that is amended due to a change of ownership; and

(iii) $260 [~~$200~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(B) For each place of business having combined gross annual sales of $200,000 - $499,999.99, the fees are:

(i) $780 [~~$600~~] for a two-year license;

(ii) $780 [~~$600~~] for a two-year license that is amended due to a change of ownership; and

(iii) $390 [~~$300~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(C) For each place of business having combined gross annual sales of $500,000 - $999,999.99, the fees are:

(i) $1,040 [~~$800~~] for a two-year license;

(ii) $1,040 [~~$800~~] for a two-year license that is amended due to a change of ownership; and

(iii) $520 [~~$400~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(D) For each place of business having combined gross annual sales of $1 million - $9,999,999.99, the fees are:

(i) $1,300 [~~$1,000~~] for a two-year license;

(ii) $1,300 [~~$1,000~~] for a two-year license that is amended due to a change of ownership; and

(iii) $650 [~~$500~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(E) For each place of business having combined gross annual sales greater than or equal to $10 million, the fees are:

(i) $1,950 [~~$1,500~~] for a two-year license;

(ii) $1,950 [~~$1,500~~] for a two-year license that is amended due to a change of ownership; and

(iii) $975 [~~$750~~] for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(3) No person may operate or conduct business as a device manufacturer in this state without first obtaining a license from the department. All applicants for a device manufacturer license or renewal license shall pay a licensing fee. All fees are nonrefundable. Licenses are issued for two-year terms. A license shall only be issued when all past due fees and delinquency fees are paid. License fees are based on gross annual device sales.

(A) For a manufacturer with gross annual device sales of $0 - $499,999.99, the fees are:

(i) - (ii) (No change.)

(iii) $240 for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(B) For a manufacturer with gross annual device sales of $500,000 - $9,999,999.99, the fees are:

(i) - (ii) (No change.)

(iii) $1,080 for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(C) For a manufacturer with gross annual device sales greater than or equal to $10 million, the fees are:

(i) - (ii) (No change.)

(iii) $1,800 for a [~~two-year~~] license that is amended during the current licensure period due to minor changes.

(b) - (d) (No change.)

§229.441. Minimum Standards for Licensure.

(a) Minimum requirements. All distributors or manufacturers of devices engaged in the design, manufacture, packaging, labeling, storage, installation, and servicing of devices must comply with the minimum standards of this section in addition to the statutory requirements contained in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act). For the purpose of this section, the policies described in the United States Food and Drug Administration's (FDA's) Compliance Policy Guides as they apply to devices shall be the policies of the Department of State Health Services [~~Texas Department of Health~~] (department).

(b) - (f) (No change.)

(g) Device labeling exemptions. Device labeling or packaging exemptions adopted under the Federal Food, Drug, and Cosmetic Act, as amended, shall apply to devices in Texas except insofar as modified or rejected by rules of the Executive Commissioner of the Health and Human Services Commission [~~Texas Board of Health (board)~~].

(h) - (l) (No change.)

§229.443. Enforcement and Penalties.

(a) Inspection.

(1) To enforce these sections or the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act), the Commissioner of the Department of State Health Services (commissioner), an authorized agent, or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge of a place of business:

(A) - (C) (No change.)

(2) - (4) (No change.)

(b) - (d) (No change.)

(e) Adulterated and misbranded device. If the Department of State Health Services [~~Texas Department of Health~~] (department) identifies an adulterated or misbranded device, the department may impose the applicable provisions of Subchapter C of the Act including, but not

limited to: detention, emergency order, recall, condemnation, destruction, injunction, civil penalties, criminal penalties, and/or administrative penalties. Administrative and civil penalties will be assessed using the Severity Levels contained in §229.261 of this title (relating to Assessment of Administrative or Civil Penalties).

§229.444. Device Distributors and Manufacturers Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is required to be established by the Executive Commissioner of the Health and Human Services Commission [~~Texas Board of Health (board)~~] by Health and Safety Code, §431.275 and is subject to the Health and Safety Code, §11.016.

(b) (No change.)

(c) Purpose. The purpose of the committee is to provide advice to the Executive Commissioner of the Health and Human Services Commission [~~board~~] in the area of licensure of device distributors and manufacturers.

(d) Tasks.

(1) The committee shall advise the Executive Commissioner of the Health and Human Services Commission [~~board~~] concerning rules relating to licensing of device distributors and manufacturers.

(2) The committee shall advise the Executive Commissioner of the Health and Human Services Commission [~~board~~] in the development of standards and procedures relating to the licensing of device distributors and manufacturers; make recommendations to the Executive Commissioner of the Health and Human Services Commission [~~board~~] relating to the content of the rules adopted to implement the licensing of device distributors and manufacturers; and perform any other functions requested by the Executive Commissioner of the Health and Human Services Commission [~~board~~] to implement and administer the rules regarding the licensing of device distributors and manufacturers.

(3) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission [~~board~~].

(e) Review and duration. By September 1, 2007, the Executive Commissioner of the Health and Human Services Commission [~~board~~] will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of five members appointed by the Executive Commissioner of the Health and Human Services Commission [~~board~~]. The composition of the committee shall include:

(1) - (3) (No change.)

(g) (No change.)

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) (No change.)

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Executive Commissioner of the Health and Human Services Commission [~~board~~]. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) - (6) (No change.)

(i) - (k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) - (4) (No change.)

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the Executive Commissioner of the Health and Human Services Commission [~~board~~] and each member of the committee within 30 days of each meeting.

(B) (No change.)

(m) (No change.)

(n) Statement by members.

(1) The Executive Commissioner of the Health and Human Services Commission [~~board~~], the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner of the Health and Human Services Commission [~~board~~], department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the Health and Human Services Commission [~~board~~], the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) - (6) (No change.)

(o) Reports to the Executive Commissioner of the Health and Human Services Commission [~~board~~]. The committee shall file an annual written report with the Executive Commissioner of the Health and Human Services Commission [~~board~~].

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission [~~board~~], the status of any rules which were recommended by the committee to the Executive Commissioner of the Health and Human Services Commission [~~board~~], and anticipated activities of the committee for the next year.

(2) (No change.)

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the Executive Commissioner of the Health and Human Services Commission [~~board~~] each September. It shall be signed by the presiding officer and appropriate department staff.

(p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604028
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER D. FIRE AND ALLIED LINES INSURANCE

DIVISION 9. VOLUNTARY INSPECTION PROGRAM PLAN OF OPERATION

28 TAC §5.3800

The Texas Department of Insurance proposes amendments to §5.3800, concerning the Voluntary Inspection Program fees charged for initial residential property inspections and follow-up inspections. These fees are specified in the Voluntary Inspection Program (VIP) Plan of Operation in §5.3800(e). The VIP was created in 1995 by the 74th Legislature to provide a mechanism for any person having an insurable interest in real or tangible personal property at a fixed location to procure an independent inspection of the condition of the property for purposes of purchasing residential property insurance. The proposed amendments to §5.3800(e) are necessary to increase the fees that may be charged by inspectors in the program to individuals who request an inspection of their residential property and to provide for automatic annual increases in the fees based on the Consumer Price Index of the U.S. Department of Labor, Bureau of Labor Statistics. The current fees were established in 1996 when the Plan of Operation was first adopted and are now too low to attract enough inspectors to perform inspections for the Voluntary Inspection Program. Many inspectors are certified real estate inspectors, and based on an informal survey of various areas of the state, the Department determined that these inspectors generally charge approximately $150 to $400 for a real estate inspection. The Department has also determined that in many instances the VIP fee is added on to the real estate fee when an inspection is conducted for purposes of VIP certification of insurability. Despite this fact, an informal Department survey indicates that the current VIP fee of $50 does not provide enough financial incentive for qualified inspectors to participate. The informal Department survey of qualified inspectors also indicates that many more inspectors would be willing to conduct the inspections if the fee were set at $100 or more. Therefore, the Department is proposing to amend the current fee amounts, increasing them from an amount not to exceed $50 to an amount not to exceed $100 for initial inspections, and from an amount not to exceed $25 to an amount not to exceed $50 for follow-up inspections. The fees are proposed to be effective January 1, 2007. In order to ensure that inspection fees are competitive enough to ensure the continued availability of inspectors for homeowners who want to utilize the inspection program, the proposal includes a provision to provide for automatic annual increases in the fees by the same percentage of increase as the increase in the Consumer Price Index established by the U.S. Department of Labor, Bureau of Labor Statistics for the prior calendar year for all urban consumers for all items and for all regions combined, rounded to the nearest dollar. Under this proposed provision, the maximum amount that could be charged for the initial VIP inspections and follow-up inspections would be automatically increased annually in accordance with the Consumer Price Index beginning on January 1, 2008. Also beginning January 1, 2008, persons interested in requesting inspections and in conducting inspections will be able to obtain the latest fee amounts, along with the method for computing the fees, at the Department's VIP website www.TDI.state.tx.us/consumer/VIPcommish.html, as well as from the Department by regular mail. Additionally, in order to ensure adequate financial incentive for inspectors to perform the inspections, the proposal would allow inspectors to charge the individual requesting the inspection for mileage for the most direct route to and from the residential property that is inspected; such fees are required to be the same as the federal standard mileage rate for business use established by the Internal Revenue Service. The mileage fees are proposed to be effective January 1, 2007, and if the Internal Revenue Service adjusts the mileage rate for business use, the VIP inspector mileage rate will change to remain equivalent. Beginning January 1, 2007, the latest mileage rate will be available at the Department's VIP website www.tdi.state.tx.us/consumer/VIPcommish.html and will also be available by regular mail from the Department. The Department is also proposing changes to §5.3800(i)(1)(A)(iii), (iv), (v), and (j)(2)(C) to delete obsolete statutory citations and to correct a typographical error. Insurance Code Article 21.07-4, which is referenced in §5.3800(i)(1)(A)(iii), was repealed in the non-substantive Insurance Code revision, Acts 2003, 78th Legislature, Chapter 1274, §26(a)(1), effective April 1, 2005. Article 21.07-4 was re-adopted as Chapter 4101 in the same non-substantive Insurance Code revision. Insurance Code Article 21.14, which is referenced in §5.3800(i)(1)(A)(iv) and (v), was repealed in the non-substantive Insurance Code revision, Acts 2003, 78th Legislature, Chapter 1274, §26(a)(1), effective April 1, 2005. Article 21.14 was re-adopted as §§4051.001 - 4051.303 in the same non-substantive Insurance Code revision. Article 1.10E of the Insurance Code, which is referenced in §5.3800(j)(2)(C), was repealed in the non-substantive Insurance Code revision, Acts 1999, 76th Legislature, Chapter 101, §5, effective September 1, 1999. Article 1.10E was re-adopted as Chapter 84 in the same non-substantive Insurance Code revision. Therefore, all current references to the repealed articles are deleted, and the updated and correct references are substituted. A typographical error in §5.3800(j)(2)(C), the changing of the word of to the word or, is corrected.

Alexis Dick, Deputy Commissioner, Inspections Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed amendments. Ms. Dick has also determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Dick has further determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposed amendments will be the availability of more inspectors willing to participate in the Voluntary Inspection Program. This increased availability will result in individual residential property owners being able to find qualified inspectors more easily and if circumstances make it appropriate, obtain an inspection certificate which creates a presumption that the property condition is adequate for residential property insurance to be issued. Both residential property owner and inspector participation in the VIP is voluntary, and any costs of compliance with the proposed amendments would be incurred solely as the result of voluntary action taken by individuals. Accordingly, the proposed amendments will not have an impact on small and micro businesses. The Department has considered the purpose of the applicable statute and proposed amendments and has determined that because of the voluntary nature of this program for both residential property owners who are requesting inspections and persons who are conducting the inspections that it is not necessary, reasonable, legal nor feasible to waive or modify the proposed requirements for small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 18, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Alexis Dick, Deputy Commissioner, Inspections Division, Mail Code 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of Chief Clerk by no later than 5:00 p.m. on September 18, 2006. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under Insurance Code Articles 5.33B and 5.98 and §36.001. Article 5.33B authorizes the Commissioner to adopt a Plan of Operation for the Voluntary Inspection Program which shall include rules setting the fee which may be charged to the person requesting the inspection. Article 5.98 provides that the Commissioner may adopt reasonable rules to accomplish the purposes of Chapter Five of the Insurance Code. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code Article 5.33B

§5.3800. Voluntary Inspection Program Plan of Operation.

(a) - (d) (No change.)

(e) Fees.

(1) (No change.)

(2) An inspector may charge a reasonable fee not to exceed $100 [~~$50~~] per inspection for the inspection of a residential property risk effective January 1, 2007.

(3) An inspector may charge a reasonable fee not to exceed $50 [~~$25~~] per follow-up inspection in the event repairs are made within 90 days of the initial inspection effective January 1, 2007.

(4) (No change.)

(5) The maximum fees that may be charged for an inspection and a follow-up inspection shall be automatically increased on an annual basis on January 1 of each year, beginning on January 1, 2008, by the same percentage of increase as the increase in the Consumer Price Index established by the U.S. Department of Labor, Bureau of Labor Statistics for the prior calendar year for all urban consumers for all items and for all regions combined, rounded to the nearest dollar. Current inspector fees and the method used to compute the current inspector fees will be available at the Department's VIP website www.tdi.state.tx.us/consumer/VIPcommish.html effective January 1, 2008, and may be obtained by mail from the Inspections Division, Mail Code 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(6) An inspector may charge, in addition to the inspection fee and the follow-up inspection fee, a reasonable fee for mileage for each trip to and from the residential property risk, taking the most direct route. The mileage fee shall not exceed the federal standard mileage rate for business use as established by the Internal Revenue Service effective January 1, 2007. The maximum mileage rate for VIP inspectors will change to remain equivalent to the federal standard mileage rate for business use as established by the Internal Revenue Service if the federal standard mileage rate is changed by the Internal Revenue Service. The current mileage rate will be available at the Department's VIP website www.tdi.state.tx.us/consumer/VIPcommish.html, effective January 1, 2007, and may be obtained by mail from the Inspections Division, Mail Code 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(f) - (h) (No change.)

(i) Certification or Licensing of Inspectors.

(1) Certification.

(A) The following individuals may be certified by the Department as qualified inspectors under this program:

(i) - (ii) (No change.)

(iii) Persons holding an insurance adjusters license pursuant to the [~~Article 21.07-4,~~] Insurance Code Chapter 4101;

(iv) Persons holding a local recording agents license pursuant to the [~~Article 21.14,~~] Insurance Code §§4051.001 - 4051.303;

(v) Persons holding a solicitors license pursuant to the [~~Article 21.14,~~] Insurance Code §§4051.001 - 4051.303; or

(vi) (No change.)

(B) (No change.)

(2) - (5) (No change.)

(j) Denial, Suspension, Cancellation or Revocation of an Inspector's Certification or License.

(1) (No change.)

(2) After notice and opportunity for a hearing, the Commissioner may cancel or revoke any license or certification issued under this section if the holder or possessor of the license or certification is found to be in violation of, or to have failed to comply with, any provisions of this section or any other rule or regulation of the Department or any specific provision of the Texas Insurance Code. In lieu of cancellation or revocation, the Commissioner, upon determination from the facts that it would be fair, reasonable or equitable, may order one or more of the sanctions specified in subparagraphs (A) - (D) of this paragraph.

(A) - (B) (No change.)

(C) The Commissioner may issue an order directing the holder or [of] possessor of the certification or license to pay an administrative penalty in accordance with Chapter 84 [Article 1.10E] of the Insurance Code.

(D) (No change.)

(3) - (4) (No change.)

(k) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604068
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

The Texas Department of Insurance proposes amendments to §§11.1, 11.2, 11.203, 11.204, 11.301, 11.302, 11.501, 11.503 - 11.506, 11.508 - 11.511, 11.602 ,11.706, 11.801, 11.804, 11.810, 11.901, 11.902, 11.904, 11.1201, 11.1206, 11.1301, 11.1302, 11.1401, 11.1403, 11.1600, 11.1605, 11.1607, 11.1702, 11.1703, 11.1801, 11.1901, 11.1902, 11.2103, 11.2201, 11.2207, 11.2303, 11.2315, 11.2402, 11.2405, 11.2406, 11.2501 - 11.2503, 11.2601 - 11.2604, 11.2608, and 11.2609, concerning the regulation of health maintenance organizations (HMOs). These amendments update statutory references, correct typographical errors and incorrect cross references within Chapter 11, replace references to the "Texas Health Maintenance Organization Act" with references to Insurance Code chapters and other applicable insurance laws and regulations of this state that apply to HMOs, amend the definitions of adverse determination and institutional provider, provide for the use of matrix filings, clarify fee amounts for evidence of coverage filings, remove restrictions on variable language allowed in evidence of coverage documentation, delete certain minimum worth requirements, amend copayment requirements, clarify the requirements of enrollee participation in quality improvement programs, adopt nationally recognized standards for physician and provider credentialing, amend the term specialty care to include specialty hospitals and single healthcare service plan physicians and providers, and waive access requirements for HMOs providing covered services to participants in the CHIP Perinatal Program as requested by the Health and Human Services Commission.

The proposed amendments to several sections delete references to the terms "Texas Health Maintenance Organization Act" and "Act" as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, which reorganized the regulatory statutes that apply to HMOs into multiple statutes that are no longer organized as a single "Act." To address this, the proposed amendments to these sections replace the terms "Texas Health Maintenance Organization Act" and "Act" with references to the applicable chapters of the Insurance Code, including Chapters 843 (Health Maintenance Organizations), 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), 1452 (Physician and Provider Credentials), and other applicable insurance laws and regulations of this state that apply to HMOs. Therefore, since all statutory references to the Act no longer accurately identify all of the statutory regulations that apply to HMOs, this deletion and replacement is being made throughout Chapter 11, including those references in §§11.1, 11.2(a) and (b)(1), 11.203(d), 11.204, 11.301, 11.302, 11.504, 11.506, 11.508 - 11.511, 11.602, 11.706, 11.804, 11.810(b)(5), 11.901, 11.902, 11.904, 11.1201, 11.1301, 1302(a)(3) and (d)(4), 11.1401, 11.1600, 11.1605(c), (d), and (e), 11.1607, 11.1702, 11.1703, 11.1801, 11.2103, 11.2303, 11.2315, 11.2405 - 11.2406, 11.2501 - 11.2503, 11.2601(a) and (b), 11.2602(1) and (2), (4)(A), and (B), 11.2603(a), (e), and (g), 11.2604, 11.2608(b) and 11.2609.

The proposed amendment to §11.2(b)(3) changes the definition of adverse determination to be consistent with the definition contained in the Insurance Code §843.002(1) by replacing the term furnished with the term provided, by replacing the term adopted with the term proposed, by substituting the term enrollee for the term patient, and by adding the phrase by a health maintenance organization. The Legislature changed the definition of adverse determination during the 77th Legislative Session. The proposed amendment to §11.2(b)(24) deletes the terms infusion services centers and urgent care centers from the definition of institutional providers. This change is necessary for consistency with the credentialing requirements in proposed §11.1902(4) and (7), which require an institutional provider to be a licensed entity. Because infusion services centers and urgent care centers are not licensed entities, they are deleted in the definition of institutional providers. New regulations regarding the use of matrix filings have been included in the proposed amendments to §§11.501 and 11.505. Accordingly, the proposed amendment to §11.2 includes a new definition of matrix filing. Lastly, the proposed amendment to §11.2 re-numbers the remaining definitions accordingly.

In addition to updating statutory references, the proposed amendment to §11.301(4)(A) revises the term evidence of coverage to evidence of coverage filings. Section 11.301(4)(A) cross references §11.501 of Chapter 11 (relating to Forms Which Must Be Approved Prior to Use). The proposed changes to §11.501 of Chapter 11 relate to the term evidence of coverage. The proposed changes to §11.301(4)(A) are necessary for consistency with the terms included in §11.501 of Chapter 11 that are also being proposed for amendment in this proposal.

The proposed amendments to §11.501 include new provisions relating to the use of matrix filings. The proposed amendments designate the current text as subsection (a) and add new subsections (b) and (c). The proposed amendment to newly designated §11.501(a) adds matrix filings to the list of forms that are considered part of an evidence of coverage. The existing rule does not address matrix filings, and this proposal is the first formal recognition of their acceptability for HMO evidence of coverage filings. The proposed new §11.501(b) clarifies that each of the listed forms in subsection (a) must be identified with a unique form number and must be individually approved by the commissioner before being issued, delivered, or used in Texas.

Additionally, the proposed new §11.501(b) clarifies that each of the forms listed in subsection (a), except for matrix filings, are considered individual evidence of coverage filings and are subject to the filing fees prescribed in 28 Texas Administrative Code §7.1301(g)(4) (relating to Regulatory fees). Section 7.1301(g)(4) prescribes that a fee of $100 be assessed for evidence of coverage filings that require approval. The proposed amendment is necessary to provide clarification, fairness, and consistency regarding the amount of the filing fees that will be charged for the filing of these types of forms. The proposed new §11.501 makes clear that a fee of $100, as prescribed in §7.1301(g)(4), will be assessed for each form listed in subsection (a), except for a matrix filing, that is filed with the Department, and that a fee of $50 will be assessed for each form that is resubmitted to the Department after withdrawal or disapproval. A review of all evidence of coverage form filings received by the Department from five major HMOs during the past year reveals that all of the evidence of coverage filings were received as individual filings, rather than one filing containing multiple evidence of coverage form filings linked together under one form number. While some HMOs may have filed a small number of their evidence of coverage filings as one document linked together under a single form number in order to pay $100 for the entire filing, that does not appear to be the standard practice. Therefore, the proposed clarification does not substantially alter the current practice of the Department or the industry. The proposed new §11.501(c) prescribes the fees for matrix filings as $50 per individual evidence of coverage provision, with a maximum fee of $500, whether the filing be an initial filing or a resubmission. Unlike the current structure for single evidence of coverage filings that require an HMO to refile the entire document whenever any provision within the document must be changed to accommodate new business needs, matrix filings allow HMOs to file various individual provisions at one time that may be combined in a variety of ways to create new evidences of coverage. Once the various provisions are approved by the Department, an HMO has much more flexibility to create new evidences of coverage by combining the approved provisions into new documents, and this flexibility will contribute to increased speed to market for new products. An additional benefit of matrix filings is a cost savings to HMOs. Currently, the Department only accepts single evidence of coverage filings and assesses a fee of $100 per filing. Therefore, an HMO filing 12 single evidence of coverage filings will be assessed filing fees totaling $1200 for those filings. However, under the proposed matrix filing approach, an HMO will be able to file multiple provisions that are adequate for many more than 12 evidences of coverage in a single filing. If the HMO files more than 10 evidence of coverage provisions in its matrix filing, it will only be assessed $500, since the maximum fee allowed for a matrix filing is $500. This will save the HMO $700 compared to the filing of 12 single evidence of coverage filings and will allow more flexibility for creating many more evidences of coverage. In addition, the Department anticipates the use of matrix filings will streamline and expedite the Department's overall review process.

The proposed amendments to §11.503 amend the term evidence of coverage to evidence of coverage filing. These proposed changes are necessary for consistency with the terms in §§11.301 and 11.501 of Chapter 11 (relating to Filing Requirements and Forms Which Must Be Approved Prior to Use) that are also proposed to be amended in this proposal.

The specifications for filing a matrix filing are set out in the proposed new §11.505(h)(1) and (2). Each matrix filing must comply with the filing requirements of §11.301 (relating to Filing Requirements) and must include a unique form number that is sufficient to distinguish the filing as a matrix filing. The proposed new §11.505(h)(2) describes the requirements relating to provision language. While variable language must still be enclosed in brackets and must include the range of variable information or amounts, the proposed amendment to §11.505(f) eliminates the remaining restrictions on variable language allowed in evidence of coverage filings.

The proposed amendment to §11.506(2)(A) eliminates the current copayment charge requirement that a basic service HMO may not impose copayment charges that exceed 50 percent of the total cost of providing any single service to its enrollees, nor in the aggregate more than 20 percent of the total cost to the HMO of providing all basic health care services. The proposed amendment to §11.506(2)(A) also eliminates the current copayment charge requirement that a basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year total 200 percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee. Instead, the proposed amendment to §11.506(2)(A) prescribes a copayment charge requirement modeled after the Insurance Code §1301.0046 (regulating preferred provider benefit plans). The proposal provides that each HMO may establish one or more reasonable copayment options and specifies that a reasonable copayment option may not exceed 50 percent of the total covered amount applicable to the medical or health care services. Although §1301.0046 of the Insurance Code relates specifically to preferred provider benefit plans, the Department is proposing this standard as a fair and reasonable standard that will adequately protect the interest of HMO enrollees.

The proposed amendment to §11.801(a) eliminates the requirement that an HMO licensed before September 1, 1999, must comply with the minimum net worth requirements specified in the Insurance Code §843.4031. This change is necessary to reflect the fact that §843.4031 is no longer law. Insurance Code §843.4031 was enacted by the 76th Texas Legislature as a temporary provision and expired on January 1, 2003. Also, an amendment to §11.810(b)(20) to delete the reference to the Insurance Code §843.4031 is proposed for the same reason.

The proposed amendment to §11.1206(b) deletes the reference to the "Act" and replaces it with a specific reference to the Insurance Code §843.105. For clarity and accuracy, the proposed amendment to §11.1206(b) replaces the phrase defined with the phrase provided for. This change is necessary because the Insurance Code §843.105 provides for the use of management and exclusive agency contracts, but does not define these terms.

The proposed amendment to §11.1403 corrects a typographical error in the toll-free complaint number in the Spanish language notice and corrects the misspelling of the term complaint.

The proposed amendment to §11.1605(c) clarifies that small employer plans, as defined by Insurance Code §1501.002, are exempt from the requirement that HMOs that provide coverage for prescription drugs under an individual or group health benefit plan must comply with Insurance Code Chapter 1369 Subchapter A and Department rules.

The proposed amendment to §11.1607(h)(2) clarifies that the term specialty care includes specialty hospitals and single healthcare service plan physicians and providers, such as vision and dental care. There has been some industry confusion and Department inconsistency regarding the treatment of

vision and dental care providers with regards to access of care requirements. The proposed amendment is necessary to make clear that vision and dental care providers are subject to the access of care requirements prescribed in §11.1607(h)(2) and not those prescribed in (h)(1). The proposed new §11.1607(i) originates from a request from the Commissioner of the Health and Human Services Commission. The Health and Human Services Commission recently implemented a new program, the CHIP Perinatal Program. Eligible participants in this program will receive care from HMOs for certain covered services. Pursuant to the Health and Safety Code §62.051(c) and (d), the Commissioner of the Health and Human Services Commission requested that the access of care requirements for HMOs participating in this program be waived. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission oversee the implementation of a child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Insurance. Additionally, the Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent the Texas Department of Insurance, delegate to the Texas Department of Insurance the authority to adopt, with the approval of the Health And Human Services Commission, any rules necessary to implement the program. The proposed new §11.1607(i) waives the access of care requirements for an HMO that has a contract with the Health and Human Services Commission and provides covered services to participants in the CHIP Perinatal Program. The proposed amendments to §11.1607 also re-designate remaining subsections.

The proposed amendment to §§11.1901(a) and (b)(1) specifies that an enrollee, unless the HMO has no enrollees, must be actively involved in an HMO's quality improvement program, but eliminates the requirement that an enrollee must be appointed to the HMO's quality improvement committee. This amendment is needed to provide flexibility in enrollee participation in an HMO's quality improvement program. An enrollee may participate in the HMO's program in a variety of ways, and therefore, the rule still requires an enrollee's active participation in the HMO's program to ensure better service for all enrollees in the plan.

Pursuant to the Insurance Code §1452.006, the proposed amendments to §11.1902(4) and (7) eliminate the current requirements relating to the credentialing process for contracted physicians and providers. In lieu of these requirements, the Department is proposing to adopt by reference the credentialing standards of the National Committee on Quality Assurance (NCQA). Section 1452.006 of the Insurance Code requires that rules adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, that relate to implementation and maintenance by an HMO of a process for selecting and retaining affiliated physicians and providers must comply with the Insurance Code Chapter 1452 Subchapter A and standards adopted by the NCQA, to the extent those standards do not conflict with other laws of this state. The Department has determined that the standards do not conflict with the laws of this state. These proposed amendments will also streamline the Department's health plan oversight while maintaining the HMO's plan accountability. Also, as a result of the Department's adoption of the NCQA's standards by reference, the Department will not need to update its regulations each time the NCQA amends its standards, which is approximately once a year. This will ensure that the Department's credentialing regulations for contracted physicians and providers are current and accurate, resulting in more efficient industry regulation and better service to plan enrollees.

The proposed amendments to §§11.2201(b) and 11.2402(b) correct cross references to other rule provisions within Chapter 11.

The proposed amendment to §§11.2207(a) and (b)(1) are necessary for consistency with the proposed amendments to §§11.1901(a) and (b)(1) and clarify that an enrollee must be actively involved in an HMO's quality improvement program but does not have to be appointed to the HMO's quality improvement committee. The proposed amendments to §11.2207(d)(4) and (d)(7) are necessary for consistency with the proposed amendments to §11.1902(4) and (7) and eliminate the current credentialing requirements relating to the retention of contracted physicians and providers, and in lieu of those requirements, adopt by reference the credentialing standards of the NCQA.

The proposed amendment to §11.2602 re-numbers the paragraphs setting out definitions.

Jennifer Ahrens, Associate Commissioner for the Life, Health & Licensing Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal implications for state or local government as a result of enforcing and administering the amendments. The proposal will have no anticipated effect on local employment or local economy.

Ms. Ahrens has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the proposed amendments will be better quality of service for HMO enrollees, increased regulatory efficiency, and reduced industry confusion resulting from prior inconsistent interpretations. Any economic costs to HMOs will result from compliance with proposed §§11.501, 11.1902(4) and (7) and 11.2207(d)(4) and (d)(7).

Proposed §11.501(c) requires a filing fee of $50 for each evidence of coverage provision included in a matrix filing with a maximum fee of $500, whether the filing is an initial filing or a resubmission. However, the proposal does not require HMOs to use matrix filings. Those opting not to do so will not be affected by the filing fee, as they may continue to pay the existing rate for each single evidence of coverage filing submitted for review. A matrix filing is one which contains a number of various provisions which an HMO may use to create multiple evidences of coverage. The existing rule does not address matrix filings, and this proposal is the first formal recognition of their acceptability for HMO evidence of coverage filings. Accordingly, when the Department currently accepts evidence of coverage filings, it assesses the standard single filing fee of $100 for each reviewed filing. The proposed fee reflects the fact that an HMO can create more than one evidence of coverage through the combination of various matrix provisions. The provision for matrix filings actually allows an HMO to better manage its filing costs by taking advantage of filing multiple evidence of coverage provisions for a single maximum fee of $500, resulting in potential savings.

Under proposed §11.501(c), HMOs that re-submit an evidence of coverage filing after withdrawal or disapproval will be required to pay a fee of $50.

Proposed §§1902(4) and (7) and 11.2207(d)(4) and (d)(7) adopt the credentialing standards of the National Committee for Quality Assurance (NCQA) by reference and require all HMOs to follow these credentialing standards. At a minimum, an HMO will have to obtain these credentialing standards in order to comply with

proposed §§1902(4) and (7) and 11.2207(d)(4) and (d)(7). For the year 2007, these credentialing standards will be published by the NCQA at a cost of $180. It is anticipated that the NCQA will publish these standards each year at a similar cost.

There will be no difference in the cost of compliance between a large and small business as a result of the proposed amendments. A matrix filing fee will only be charged to an HMO that opts to make a matrix filing, regardless of the HMO's size. The cost of purchasing the NCQA publication containing the applicable credentialing standards will be the same for each HMO required to comply with these standards, regardless of its size. The agency has considered the purpose of the Insurance Code §§843.102 and 1452.006, which is to maintain effective regulation of HMOs by ensuring that health care services are provided to enrollees under reasonable standards of quality of care that are consistent with prevailing professionally recognized standards of medical practice. The agency has considered the purpose of the Insurance Code §843.154, which is to collect fees sufficient to administer the proper review of evidence of coverage filings. Accordingly, the Department has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the Department's position that the applicable statutes require equal application to all HMOs, regardless of their size, and that the applicable statutes do not contemplate any disparate effect on enrollees of HMOs based on the size of the HMO.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 18, 2006, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jennifer Ahrens, Associate Commissioner for the Life, Health & Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before 5:00 p.m. on September 18, 2006. If a hearing is held, oral and written comments presented at the hearing will be considered.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §11.1, §11.2

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.1. Purpose.

This chapter implements the Insurance Code Chapters 843, 1271, 1272, 1367, and 1452, and other applicable insurance laws of this state that apply to HMOs [~~Texas Health Maintenance Organization Act, Texas Insurance Code, Chapters 20A and 843~~].

(1) Severability. Where any terms or sections of this chapter are determined by a court of competent jurisdiction to be inconsistent with the Insurance Code Chapters 843, 1271, 1272, 1367, or 1452, or other applicable insurance laws of this state that apply to HMOs, the applicable chapters of the Insurance Code [~~Texas Health Maintenance Organization Act, as identified by this section, the Act~~] will apply, but the remaining terms and provisions of this chapter will continue in effect.

(2) (No change.)

(3) Violation of rules. A violation of the lawful rules or orders of the commissioner made pursuant to this chapter constitutes a violation of the Insurance Code Chapters 843, 1271, 1272, 1367, and 1452 and other applicable insurance laws of this state that apply to HMOs [~~Texas Health Maintenance Organization Act~~].

§11.2. Definitions.

(a) The definitions found in the [~~Texas Health Maintenance Organization Act, Texas~~] Insurance Code §843.002[,] are incorporated into this chapter.

(b) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) [~~Act--The Texas Health Maintenance Organization Act, codified as the Texas Insurance Code Chapters 20A and 843.~~]

[~~(2)~~] Admitted assets--All assets as defined by statutory accounting principles, as permitted and valued in accordance with §11.803 of this title (relating to Investments, Loans, and Other Assets).

(2) [~~(3)~~] Adverse determination--A determination by a health maintenance organization or a [~~upon~~] utilization review agent that [~~the~~] health care services provided [~~furnished~~] or proposed [~~adopted~~] to be provided[~~furnished~~] to an enrollee [~~a patient~~] are not medically necessary or are not appropriate.

(3) [~~(4)~~] Affiliate--A person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(4) [~~(5)~~] Agent--A person who may act as an agent for the sale of a health benefit plan under a license issued under the Insurance Code [~~Chapter 21~~].

(5) [~~(6)~~] ANHC or approved nonprofit health corporation--A nonprofit health corporation certified under the Occupations Code §162.001, as amended. [~~of the Occupations Code.~~]

(6) [~~(7)~~] Annual financial statement--The annual statement to be used by HMOs, as promulgated by the NAIC and as adopted by the commissioner under the Insurance Code Chapter 802 [~~Article 1.11~~] and §843.155 [~~§§802.001, 802.003 and 843.155~~].

(7) [~~(8)~~] Authorized control level--The number determined under the RBC formula in accordance with the RBC instructions.

(8) [~~(9)~~] Basic health care service--Health care services which an enrolled population might reasonably require to maintain good health, as prescribed in §§11.508 and 11.509 of this title (relating to Mandatory Benefit Standards: Group, Individual and Conversion Agreements, and Additional Mandatory Benefit Standards: Group Agreement Only).

(9) [~~(10)~~] Clinical director--Health professional who meets the following criteria:

(A) is appropriately licensed;

(B) is an employee of, or party to a contract with, a health maintenance organization; and

(C) is responsible for clinical oversight of the utilization review program, the credentialing of professional staff, and quality improvement functions.

(10) [~~(11)~~] Code--The Texas Insurance Code.

(11) [~~(12)~~] Consumer choice health benefit plan--A health benefit plan authorized by the Insurance Code Chapter 1507 [~~Article 3.80 or Article 20A.09N~~], and as described in Subchapter AA of Chapter 21 of this title (relating to Consumer Choice Health Benefit Plans).

(12) [~~(13)~~] Contract holder--An individual, association, employer, trust or organization to which an individual or group contract for health care services has been issued.

(13) [~~(14)~~] Control--As defined in the Insurance Code §§823.005 and 823.151.

(14) [~~(15)~~] Controlled HMO--An HMO controlled directly or indirectly by a holding company.

(15) [~~(16)~~] Controlled person--Any person, other than an HMO, who is controlled directly or indirectly by a holding company.

(16) [~~(17)~~] Copayment--A charge, which may be expressed in terms of a dollar amount or a percentage of the contracted rate, in addition to premium to an enrollee for a service which is not fully prepaid.

(17) [~~(18)~~] Credentialing--The process of collecting, assessing, and validating qualifications and other relevant information pertaining to a physician or provider to determine eligibility to deliver health care services.

(18) [~~(19)~~] Dentist--An individual provider licensed to practice dentistry by the Texas State Board of Dental Examiners.

(19) [~~(20)~~] General hospital--A licensed establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(20) [~~(21)~~] HMO--A health maintenance organization as defined in the Insurance Code §843.002(14).

(21) [~~(22)~~] Health status related factor--Any of the following in relation to an individual:

(A) health status;

(B) medical condition (including both physical and mental illnesses);

(C) claims experience;

(D) receipt of health care;

(E) medical history;

(F) genetic information;

(G) evidence of insurability (including conditions arising out of acts of domestic violence, including family violence as defined by the Insurance Code Chapter 544 Subchapter D[~~Article 21.21-5~~]; or

(H) disability.

(22) [~~(23)~~] Individual provider--Any person, other than a physician or institutional provider, who is licensed or otherwise authorized to provide a health care service. Includes, but is not limited to, licensed doctor of chiropractic, dentist, registered nurse, advanced practice nurse, physician assistant, pharmacist, optometrist, registered optician, and acupuncturist.

(23) [~~(24)~~] Institutional provider--A provider that is not an individual. Includes any medical or health related service facility caring for the sick or injured or providing care or supplies for other coverage which may be provided by the HMO. Includes but is not limited to:

(A) - (L) (No change.)

(M) [~~Infusion services centers,~~]

[~~(N)~~] Residential treatment centers,

(N) [~~(O)~~] Community mental health centers,

[~~(P) Urgent care centers,~~] and

(O) [~~(Q)~~]) Pharmacies.

(24) [~~(25)~~] Limited provider network--A subnetwork within an HMO delivery network in which contractual relationships exist between physicians, certain providers, independent physician associations and/or physician groups which limit the enrollees' access to only the physicians and providers in the subnetwork.

(25) [~~(26)~~] Limited service HMO--An HMO which has been issued a certificate of authority to issue a limited health care service plan as defined in the Insurance Code §843.002.

(26) Matrix filing--A filing consisting of individual provisions, each with its own unique identifiable form number, that allows an HMO the flexibility to create multiple evidences of coverage by using combinations of approved individual provisions.

(27) - (29) (No change.)

(30) Pharmaceutical services--Services, including dispensing prescription drugs, under the Texas Pharmacy Act, Occupations Code, Subtitle J, as amended, that are ordinarily and customarily rendered by a pharmacy or pharmacist.

(31) Pharmacist--An individual provider licensed to practice pharmacy under the Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(32) Pharmacy--A facility licensed under the Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(33) - (59) (No change.)

(60) Voting security--As defined in the Insurance Code §823.007, including any security convertible into or evidencing a right to acquire such security.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604046

Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER C. APPLICATION FOR CERTIFICATE OF AUTHORITY

28 TAC §11.203, §11.204

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules

to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.203. Revisions during Review Process

(a) - (c) (No change.)

(d) Staff shall conduct qualifying examinations and notify the applicant of the need for revisions necessary to meet the requirements of the Insurance Code Chapter 843, [~~Act or~~] this chapter, and applicable insurance laws and regulations of this state that apply to HMOs. If the applicant does not make the necessary revisions, the department shall deny the application. If the time required for the revisions will exceed the time limits set out in §1.809 of this title (relating to HMO Certificate of Authority), the applicant must request additional time within which to make the revisions. The applicant must specifically set out the length of time requested, which may not exceed 90 days. The commissioner may grant or deny the request for an extension of time at his or her discretion under §1.809 of this title. Additional extensions may be requested. The request for any additional extension must set out the need for the additional time, in writing, in sufficient detail for the commissioner to determine if good cause for the extension exists. The commissioner may grant or deny any additional request for an extension of time at his or her discretion.

§11.204. Contents.

Contents of the application must include the items in the order listed in this section. The applicant must submit two additional copies of the application along with the original application.

(1) - (12) (No change.)

(13) the form of any contract or monitoring plan between the applicant and:

(A) (No change.)

(B) any physician, medical group, association of physicians, delegated entity, as described in the Insurance Code Chapter 1272 [~~Article 20A.18C~~], delegated network, as described in the Insurance Code Chapter 1272 [~~Article 20A.18D~~], or any other provider, plus the form of any subcontract between such entities and any physician, medical group, association of physicians, or any other provider to provide health care services. All contracts shall include a hold-harmless provision, as specified in §11.901(a)(1) of this title (relating to Required Provisions). Such clause shall be no less favorable to enrollees than that outlined in §11.901(a)(1) of this title.

(C) - (F) (No change.)

(14) - (24) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604047
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER D. REGULATORY REQUIREMENTS FOR AN HMO SUBSEQUENT TO ISSUANCE OF CERTIFICATE OF AUTHORITY

28 TAC §11.301, §11.302

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides

that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.301. Filing Requirements.

Subsequent to the issuance of a certificate of authority, each HMO is required to file certain information with the commissioner, either for approval prior to effectuation or for information only, as outlined in paragraphs (4) and (5) of this section and in §11.302 of this title (relating to Service Area Expansion or Reduction Applications). These requirements include filing changes necessitated by federal or state law or regulations.

(1) Completeness and format of filings.

(A) The department shall not accept a filing for review until the filing is complete. An application to modify the approved application for a certificate of authority which requires the commissioner's approval in accordance with the Insurance Code §843.080 and Chapter 1271 Subchapter C [~~Article 20A.09(l)~~] is considered complete when all information required by this section, §11.302 of this title, and §§11.1901 - 11.1902 of this title (relating to Quality of Care) that is applicable and reasonably necessary for a final determination to be made by the department, has been filed.

(B) (No change.)

(2) - (3) (No change.)

(4) Filings requiring approval. Subsequent to the issuance of a certificate of authority, each HMO shall file for approval with the commissioner information required by any amendment to items specified in §11.204 of this title (relating to Contents) if such information has not previously been filed and approved by the commissioner. In addition, an HMO shall file with the commissioner a written request to implement or modify the following operations or documents and receive the commissioner's approval prior to effectuating such modifications:

(A) the evidence of coverage filings, [~~and related forms,~~] as described in §11.501 of this title (relating to Forms Which Must Be Approved Prior to Use);

(B) - (M) (No change.)

(5) - (7) (No change.)

§11.302. Service Area Expansion or Reduction Applications.

(a) (No change.)

(b) If any of the following items are changed by a service area expansion or reduction application, the new item or any amendments to an existing item must be submitted for approval or filed for information, as specified in §11.301 of this title (relating to Filing Requirements):

(1) - (11) (No change.)

(12) a description of the method by which the complaint procedure, as specified in the Insurance Code §843.251, et seq. and related regulations, will be made reasonably available in the new service area or division, including a toll free call, and the information and complaint telephone number required by the Insurance Code §521.102 [~~Article 21.71~~], where applicable. For HMOs subject to the Insurance Code §521.102 [~~Article 21.71~~], the toll free call required by this rule and the toll free information and complaint number required by the Insurance Code §521.102 [~~Article 21.71~~] may be the same number.

(c) The department shall not accept an application for review until the application is complete. An application to modify the certificate of authority that requires the commissioner's approval in accordance with the Insurance Code §843.080 and Chapter 1271 Subchapter C [~~Article 20A.09(l)~~] is considered complete when all information required by §11.301 of this title, this section, and §§11.1901 - 11.1902 of this title (relating to Quality of Care) that is reasonably necessary for a final determination by the department, has been filed with the department.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604048

Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER F. EVIDENCE OF COVERAGE

28 TAC §§11.501, 11.503 - 11.506, 11.508 - 11.511

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.501. Forms Which Must Be Approved Prior to Use.

(a) No evidence of coverage or amendment thereto may be issued, delivered, or used in Texas unless it has been filed for review and has received the approval of the commissioner. The following forms are always considered to be part of the evidence of coverage [~~which must be approved by the commissioner prior to use~~]:

(1) - (6) (No change.)

(7) matrix filings; and

(8) [~~(7)~~] any other form attached to or made a part of the evidence of coverage.

(b) Each of the forms described in subsection (a)(1) - (8) of this section shall be identified with a unique form number and shall be individually approved by the commissioner before being issued, delivered, or used in Texas. Each of the forms described in subsection (a)(1) - (8) of this section shall be considered a separate evidence of coverage filing and, except as provided in subsection (c) of this section, shall be subject to the filing fee prescribed in §7.1301(g)(4) of this title (relating to Regulatory Fees) for initial submissions. Each form that is resubmitted after withdrawal or disapproval will be assessed a fee of $50.

(c) Notwithstanding the fee requirements prescribed in subsection (b) of this section, a fee of $50 per individual evidence of coverage provision, with a maximum fee of $500, is required for matrix filings, as listed in subsection (a)(7) of this section, whether the filing be an initial filing or a resubmission.

§11.503. Filing Requirements for Evidence of Coverage Subsequent to Receipt of Certificate of Authority.

Subsequent to receipt of a certificate of authority, no evidence of coverage filing may be amended or altered in any manner, and no new evidence of coverage filing may be used, unless the proposed new or

revised evidence of coverage filing has been filed for review and has received the approval of the commissioner. Filing requirements for the evidence of coverage filing when filed subsequent to receipt of a certificate of authority are as follows:

(1) The HMO must submit the original of the revised or new evidence of coverage filing, transmittal letter and the HMO transmittal and certification form, addressed to the Texas Department of Insurance, Life, Health & HMO Intake Unit, Mail Code 106-1E, P.O. Box 149104, Austin, Texas 78714-9104.

(2) The department will notify the HMO of the department's action in accordance with §1.704 of this title (relating to Summary Procedure; Notice).

(3) The department will base its approval or disapproval on the content of drafts submitted to the department. Printing must comply with the specifications described in §11.505 of this title (relating to Specifications for the Evidence of Coverage). Any discrepancy in content between the final print to be issued and the approved draft is grounds for revocation of certificate of authority.

(4) The review period for an evidence of coverage filing filed begins on the date on which an acceptable, typed draft of the form is received.

(5) The review period may be extended upon 30 days written notice of such extension to the HMO before the expiration of the initial review period.

(6) At the end of the review period, the evidence of coverage filing is considered approved unless it has already been either affirmatively approved or disapproved by the commissioner.

§11.504. Disapproval of an Evidence of Coverage.

(a) If the department disapproves any portion of any evidence of coverage, the department will specify the reason for the disapproval. The department is authorized to disapprove any form or withdraw any previous approval for any of the following reasons:

(1) it fails to meet the requirements of the Insurance Code Chapter 1271 [~~Act~~], these sections, or other applicable statutes and regulations;

(2) (No change.)

(3) it contains any statements that are unclear, untrue, unjust, unfair, inequitable, misleading, or deceptive or that violate the Insurance Code Chapters 541, 542, 543, 544, and 547, [~~Articles 21.21, 21.21A, 21.21-1, 21.21-2, 21.21-5, 21.21-6, or 21.55~~] in accordance with the Insurance Code §1271.005 [~~Article 20A.09Z~~] or any regulations thereunder or any other applicable law;

(4) - (7) (No change.)

(b) (No change.)

§11.505. Specifications for the Evidence of Coverage and Matrix Filings.

(a) - (e) (No change.)

(f) Certain language shall not be varied or changed without resubmitting a form for the commissioner's approval. Changeable language must be enclosed in brackets and shall include the range of variable information or amounts [~~and is limited to rates, dates, addresses, phone numbers, optional provisions as set forth in §11.511 of this title (relating to Optional Provisions) and optional benefits as set forth in §11.512 of this title (relating to Optional Benefits), and other such information, as approved by the commissioner~~].

(g) (No change).

(h) Matrix Filings. A matrix filing must comply with the filing requirements in this section and §11.301 of this chapter (relating to Filing Requirements). In addition, an HMO submitting a matrix filing:

(1) shall identify each provision with a unique form number that is sufficient to distinguish it as a matrix filing; and

(2) may use the same provision filed under one form number for all HMO products, provided the language is applicable to each HMO product; however, any changes in the language to comply with the requirements for each HMO product will require a unique form number.

§11.506. Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate.

Each enrollee residing in this state is entitled to an evidence of coverage under a health care plan. By agreement between the issuer of the evidence of coverage and the enrollee, the evidence of coverage approved under this subchapter and required by this section may be delivered electronically. Each group, individual and conversion contract and group certificate must contain the following provisions.

(1) Name, address, and phone number of the HMO--The toll-free number referred to in the Insurance Code §521.102 [~~Article 21.71~~], where applicable, must appear on the face page.

(A) - (B) (No change.)

(C) The HMO must provide the information regarding the toll-free number referred to in the Insurance Code Chapter 521 Subchapter C, [~~Article 21.71~~] in accordance with §1.601 of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures).

(2) Benefits--A schedule of all health care services that are available to enrollees under the basic, limited, or single health care service plan, including any copayments or deductibles and a description of where and how to obtain services. An HMO may use a variable copayment or deductible schedule. The copayment schedule must clearly indicate the benefit to which it applies.

(A) Copayments. An HMO may require copayments to supplement payment for health care services. Each HMO may establish one or more reasonable copayment options. A reasonable copayment option may not exceed 50 percent of the total covered amount applicable to the medical or health care services. [~~A basic service HMO may not impose copayment charges that exceed fifty percent of the total cost of providing any single service to its enrollees, nor in the aggregate more than twenty percent of the total cost to the HMO of providing all basic health care services. A basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year total two hundred percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee. This limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year.~~] The HMO shall state the copayment in the group, individual or conversion agreement and group certificate.

(B) (No change.)

(C) Immunizations. An HMO shall not charge a copayment or deductible for immunizations as described in the Insurance Code Chapter 1367, Subchapter B [~~Article 21.53F~~] for a child from birth through the date the child is six years of age, except that a small employer health benefit plan, as defined by the Insurance Code §1501.002 [~~Chapter 26~~], that covers such immunizations may charge a copayment or deductible.

(3) (No change.)

(4) Claim payment procedure--A provision that sets forth the procedure for paying claims, including any time frame for payment of claims which must be in accordance with the Insurance Code Chapter 542 Subchapter B and §1271.005 [~~Articles 21.55 and 20A.09Z~~] and the applicable rules.

(5) (No change.)

(6) Continuation of coverage--Group agreements must contain a provision providing for mandatory continuation of coverage for enrollees who were continuously covered under a group certificate for three months prior to termination of the group coverage, or newborn or newly adopted children of enrollees with three months prior continuous coverage, that is no less favorable than provided by the Insurance Code Chapter 1271 Subchapter G [~~Article 20A.09(k)~~].

(A) An enrollee shall have the option to continue coverage as provided for by the Insurance Code Chapter 1271 Subchapter G [~~Article 20A.09(k),~~] upon completion of any continuation of coverage provided under The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Public Law Number 99-272, 100 stat. 222) and any amendments thereto.

(B) A dependent, upon completion of any continuation of coverage provided under the Insurance Code Chapter 1251 Subchapter G [~~Article 3.51-6 §3B~~], shall have the privilege to continue coverage for the six [~~6~~] months prescribed by the Insurance Code Chapter 1271 Subchapter G [~~Article 20A.09(k)~~].

(C) If an HMO offers conversion coverage, it must be offered to the enrollee not less than 30 days prior to the expiration of the COBRA or the Insurance Code Chapter 1251 Subchapter G [~~Article 3.51-6 §3B~~] continuation coverage period.

(D) A basic service HMO shall notify the enrollee not less than 30 days before the end of the six months from the date continuation under the Insurance Code Chapter 1271 Subchapter G [~~Article 20A.09(k)~~] was elected that the enrollee may be eligible for coverage under the Texas Health Insurance Risk Pool, as provided under the Insurance Code Chapter 1506 [~~Article 3.77~~], and shall provide the address and toll-free number of the pool.

(7) - (8) (No change.)

(9) Eligibility--A statement of the eligibility requirements for membership, including:

(A) - (D) (No change.)

(E) a clear statement regarding the coverage of the enrollee's grandchildren up to the age of 25 under the conditions under which such coverage is required by the Insurance Code §§1201.062 and 1271.006 [~~Article 3.70-2, subsection (L) and Article 20A.09H (Children and Grandchildren)~~].

(10) - (15) (No change.)

(16) Schedule of charges--A statement that discloses the HMO's right to change the rate charged with 60 days written notice pursuant to the Insurance Code Chapter 1254 [~~Article 3.51-10~~].

(17) - (18) (No change.)

(19) Termination due to student dependent's change in status--Each group agreement and certificate that conditions dependent coverage for a child twenty-five years of age or older on the child's being a full-time student at an educational institution shall contain a provision in accordance with the Insurance Code Chapter 1503 [~~Article 21.24-2~~].

(20) Conformity with state law--A provision that if the agreement or certificate contains any provision not in conformity with the Insurance Code Chapter 1271 [~~Act~~] or other applicable laws it shall not be rendered invalid but shall be construed and applied as if it were in full compliance with the Insurance Code Chapter 1271 [~~Act~~] and other applicable laws.

(21) (No change.)

(22) Nonprimary care physician specialist as primary care physician--A provision that allows enrollees with chronic, disabling, or life threatening illnesses to apply to the HMO's medical director to utilize a nonprimary care physician specialist as a primary care physician as set forth in the Insurance Code §1271.201 [~~Article 20A.09(g)~~].

(23) Selected obstetrician or gynecologist--Individual, conversion and group agreements and certificates, except small employer plans as defined by the Insurance Code §1501.002 [~~Chapter 26~~], must contain a provision that permits an enrollee to select, in addition to a primary care physician, an obstetrician or gynecologist to provide health care services within the scope of the professional specialty practice of a properly credentialed obstetrician or gynecologist, and subject to the provisions of the Insurance Code Chapter 1451 Subchapter F [~~Article 21.53D~~]. An HMO shall not preclude an enrollee from selecting a family physician, internal medicine physician, or other qualified physician to provide obstetrical or gynecological care.

(A) - (E) (No change.)

(F) An HMO shall include in its enrollment form a space in which an enrollee may select an obstetrician or gynecologist as set forth in the Insurance Code Chapter 1451 Subchapter F [~~Article 21.53D~~]. The enrollment form must specify that the enrollee is not required to select an obstetrician or gynecologist, but may instead receive obstetrical or gynecological services from her primary care physician or primary care provider. Such enrollee shall have the right at all times to select or change a selected obstetrician or gynecologist. An HMO may limit an enrollee's request to change an obstetrician or gynecologist to no more than four changes in any 12-month period.

(G) (No change.)

(24) Diagnosis of Alzheimer's disease--An HMO that provides for the treatment of Alzheimer's disease must provide that a clinical diagnosis of Alzheimer's disease by a physician licensed in this state pursuant to the Insurance Code Chapter 1354 [~~Article 3.78~~] shall satisfy any requirement for demonstrable proof of organic disease.

(25) Drug Formulary--A group agreement and certificate, except small employer plans as defined by the Insurance Code §1501.002 [~~Chapter 26~~], that covers prescription drugs and uses one or more formularies must comply with the Insurance Code Chapter 1369 Subchapter B [~~Article 21.52J~~] and Chapter 21, Subchapter V of this title (relating to Pharmacy Benefits).

(26) (No change.)

§11.508. Mandatory Benefit Standards: Group, Individual and Conversion Agreements.

(a) Each evidence of coverage providing basic health care services shall provide the following basic health care services when they are provided by network physicians or providers, or by non-network physicians and providers as set forth in §11.506(10) or (15) of this title (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate):

(1) Outpatient services, including the following:

(A) - (G) (No change.)

(H) preventive services, including:

(i) periodic health examinations for adults as required in the Insurance Code §1271.153 [~~Article 20A.09B~~];

(ii) immunizations for children as required in the Insurance Code §1367.053 [~~Article 21.53F §3~~];

(iii) well-child care from birth as required in the Insurance Code §1271.154 [~~Article 20A.09E~~];

(iv) cancer screenings as required in the Insurance Code Chapter 1356 [~~Article 3.70-2(H)~~] relating to mammography;

(v) cancer screenings as required in the Insurance Code Chapter 1362 [~~Article 21.53F~~] relating to screening for prostate cancer;

(vi) cancer screenings as required in the Insurance Code Chapter 1363 [~~Article 21.53S~~] relating to screening for colorectal cancer;

(vii) - (viii) (No change.)

(I) (No change.)

(J) emergency services as required by the Insurance Code §1271.155 [~~Article 20A.09Y~~].

(2) - (4) (No change.)

(b) In addition to the basic health care services in subsection (a) of this section, each evidence of coverage shall include coverage for services as follows:

(1) - (2) (No change.)

(3) diabetes self-management training, equipment and supplies as required in the Insurance Code Chapter 1358 Subchapter B [~~Article 21.53G~~].

(c) - (e) (No change.)

§11.509. Additional Mandatory Benefit Standards: Group Agreement Only.

Group agreements must contain the following additional mandatory provisions.

(1) - (2) (No change.)

(3) Chemical dependency. A provision to provide benefits for the necessary care and treatment of chemical dependency that are not less favorable than for physical illness generally, subject to the same durational limits, dollar limits, deductibles and coinsurance factors is required for state-mandated health benefit plans defined in §11.2(b) of this title (relating to Definitions). Dollar or durational limits which are less favorable than for physical illness generally may be set only if such limits are sufficient to provide appropriate care and treatment under the guidelines and standards adopted under the Insurance Code Chapter 1368 [~~Article 3.51-9, §2A(d)~~], including §§3.8001 - 3.8022 of this title (relating to Standards for Reasonable Cost Control and Utilization Review for Chemical Dependency Treatment Centers).

(A) Coverage for chemical dependency may be limited to a lifetime maximum of three separate series of treatment for each covered individual as described by the Insurance Code §1368.006 [~~Article 3.51-9, §2A(b)~~].

(B) (No change.)

(4) Osteoporosis. A provision that provides coverage to a qualified individual as defined in the Insurance Code Chapter 1361 [~~Article 21.53C~~] for medically accepted bone mass measurement for the detection of low bone mass and to determine the person's risk of osteoporosis and fractures associated with osteoporosis is required for state-mandated health benefit plans defined in §11.2(b) of this title.

(5) Serious mental illness. Group agreements, except for contracts issued to small employer plans, must include a provision for the treatment of serious mental illness, as required in the Insurance Code Chapter 1355 Subchapter A [~~Article 3.51-14~~]. Small employer plans must be offered coverage for serious mental illness as required in the Insurance Code Chapter 1355 Subchapter A [~~Article 3.51-14~~]. Serious mental illness benefits are also subject to the provisions of the Insurance Code Chapter 1355 Subchapters B and C [~~Articles 3.70-2(F) and 3.72~~].

(6) Conditions affecting the temporomandibular joint. Group agreements, except for contracts issued to small employer plans and consumer choice health benefit plans defined in §11.2(b) of this title must include a provision that provides coverage for a condition affecting the temporomandibular joint as required by the Insurance Code Chapter 1360 [~~Article 21.53A~~].

(7) (No change.)

§11.510. Mandatory Offers.

Group agreements must offer the following provisions:

(1) Coverage for services and benefits on an expense incurred, service, or prepaid basis for out-patient expenses that may arise from in-vitro fertilization procedures. Benefits for in-vitro fertilization procedures must be provided to the same extent as the benefits provided for other pregnancy-related procedures under the plan. The offer to make such coverage available is required only under the conditions set out in the Insurance Code §1366.005 [~~Article 3.51-6, §3A(e)~~].

(2) Hospital and medical coverage benefits for the necessary care and treatment of loss or impairment of speech or hearing that are not less favorable than for physical illness generally, subject to the same durational limits, dollar limits, deductibles, and copayment factors, pursuant to the Insurance Code Chapter 1365 [~~Article 3.70-2(G)~~].

(3) Benefits for mental and emotional illness and disorders when confined in a hospital, with corresponding alternative treatment facility benefits pursuant to the Insurance Code Chapter 1355 Subchapter C [~~Article 3.70-2(F)~~], to the extent that such benefits are not mandated as serious mental illness under §11.509(5) of this title (relating to Additional Mandatory Benefit Standards: Group Agreement Only).

(4) For small employer groups, serious mental health benefits pursuant to the Insurance Code Chapter 1355 Subchapter C [~~Article 3.51-14~~].

§11.511. Optional Provisions.

Group, individual and conversion certificates may contain optional provisions, including, but not limited to, the following:

(1) Coordination of benefits. Group plans may contain a provision that the value of any benefits or services provided by the HMO may be coordinated with any other type of group insurance plan or coverage under governmental programs so no more than 100% of eligible expenses incurred is paid. The coordination of benefits provision applies to the plan when an enrollee has health care coverage under more than one plan. This provision will only apply for the duration of the enrollee's coverage in a group plan.

(A) - (B) (No change.)

(C) Requirements of the Insurance Code Chapter 1203 [~~Article 3.51-6B~~] and §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits) relating to coordination of benefits by insurers should be followed by HMOs that include a coordination of benefits provision in their plan.

(2) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604049
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER G. ADVERTISING AND SALES MATERIAL

28 TAC §11.602

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.602. Health Maintenance Organizations Subject to the [~~Texas~~] Insurance Code Chapters 541, 542, and 547 [~~Articles 21.21, 21.21-1, and 21.21-2,~~] and Related Rules.

Health maintenance organizations must comply with the [~~Texas~~] Insurance Code Chapters 541, 542, and 547 [~~Articles 21.21, 21.21-1, and 21.21-2,~~] and rules promulgated by the Texas Department of Insurance, pursuant to the [~~Texas~~] Insurance Code Chapters 541, 542, and 547 [~~Articles 21.21, 21.21-1, and 21.21-2~~], to the extent these rules may be applied in the same manner as insurance companies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604050
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER H. SCHEDULE OF CHARGES

28 TAC §11.706

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.706. Determination of Reasonability of Rates.

(a) (No change.)

(b) The following factors shall be considered in any review of rates under the Insurance Code Chapter 1271 Subchapter F [~~Article 20A.09~~]:

(1) - (6) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604051
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER I. FINANCIAL REQUIREMENTS

28 TAC §§11.801, 11.804, 11.810

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code

Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.801. Minimum Net Worth.

(a) On or after September 1, 1999, at the time of the initial qualifying examination, an applicant for a certificate of authority to operate an HMO must have unencumbered assets of the type described in subsection (b) of this section in excess of all of its liabilities equal to or greater than the required net worth established in Insurance Code §843.403. [~~An HMO licensed before September 1, 1999, must comply with the minimum net worth requirement in Insurance Code §843.4031.~~]

(b) - (d) (No change.)

§11.804. Investment Management by Affiliate Companies.

Subject to compliance with the provisions of the Insurance Code Chapter 843, this chapter, and applicable insurance laws and regulations of this state that apply to HMOs [~~HMO Act, as amended~~], nothing in this section shall prevent a domestic HMO, which is a member of an HMO holding company system with assets in an aggregate amount in excess of $1 billion and a tangible net worth of at least $100 million and having affiliates licensed in this state, from authorizing an affiliated corporation which, if other than the ultimate parent holding company, is solvent with at least $10 million tangible net worth and its performance and obligations under a written agreement with the HMO are guaranteed by the ultimate holding company, to invest, hold and administer as agent or nominee on behalf of such domestic HMO those bonds, notes, or other evidences of indebtedness and repurchase agreements that are authorized and permissible investments under the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~HMO Act and rules promulgated thereunder~~], and which mature within one year of the date of acquisition thereof; provided that such securities are invested, held, and administered pursuant to a written agreement authorized by the board of directors of the HMO or an authorized committee thereof, and which is submitted to the commissioner for prior approval, such approval to be based upon satisfactory evidence that such agreement will facilitate the operations of the domestic HMO and will not unreasonably diminish the service to or protection of the domestic HMO's enrollees within this state. The agreement must comply with the provisions of paragraphs (1) - (8) of this section.

(1) - (4) (No change.)

(5) All of such investments and transactions between or among affiliates and the HMO must otherwise comply with all other applicable provisions of the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~HMO Act, as amended, or applicable rules adopted thereunder by the department~~].

(6) If the HMO or the affiliate does not comply with the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~HMO Act, as amended, and this chapter promulgated thereunder,~~] or does not comply with the written agreement governing such investing, holding, and administering of securities, then the commissioner's approval will be withdrawn after reasonable notice and ample opportunity to cure the noncompliance, and any further desire to continue such arrangement must be submitted for approval.

(7) - (8) (No change.)

§11.810. Hazardous Conditions for HMOs.

(a) (No change.)

(b) An HMO may be found to be in hazardous condition, after notice and opportunity for hearing, when the commissioner finds one or more of the following conditions to exist:

(1) - (4) (No change.)

(5) an HMO fails to comply with the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~Texas Health Maintenance Organization Act (Insurance Code Chapters 20A and 843)~~] or Title 28, Texas Administrative Code, Chapter 11;

(6) - (19) (No change.)

(20) an HMO does not have the minimum net worth required by the Insurance Code §843.403 [~~or §843.4031~~];

(21) - (22) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604052

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 17, 2006

For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER J. PHYSICIAN AND PROVIDER CONTRACTS AND ARRANGEMENTS

28 TAC §§11.901, 11.902, 11.904

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.901. Required Provisions.

(a) Physician and provider contracts and arrangements shall include provisions:

(1) - (7) (No change.)

(8) regarding prompt payment of claims as described in the Insurance Code Chapter 542 Subchapter B and §1271.005 [~~Article 20A.09Z~~] and all applicable statutes and rules pertaining to prompt payment of clean claims, including Insurance Code Chapter 843, Subchapter J (Payment of Claims to Physicians and Providers) and Chapter 21, Subchapter T of this title (relating to Submission of Clean Claims) with respect to the payment to the physician or provider for covered services that are rendered to enrollees;

(9) - (10) (No change.)

(11) entitling the physician or provider upon request to all information necessary to determine that the physician or provider is being compensated in accordance with the contract. A physician or provider may make the request for information by any reasonable and verifiable means. The information must include a level of detail sufficient to enable a reasonable person with sufficient training, experience and competence in claims processing to determine the payment to be made according to the terms of the contract for covered services that are rendered to enrollees. The HMO may provide the required information by any reasonable method through which the physician or provider can access the information, including e-mail, computer disks, paper or access to an electronic database. Amendments, revisions or substitutions of any information provided pursuant to this paragraph must be made in accordance with subparagraph (D) of this paragraph. The HMO shall provide the fee schedules and other required information by the 30th day after the date the HMO receives the physician's or provider's request.

(A) - (D) (No change.)

(E) Failure to comply with this paragraph constitutes a violation of the Insurance Code Chapter [~~Chapters~~] 843, this chapter, and applicable insurance laws and regulations of this state that apply to HMOs [~~and 20A (Texas Health Maintenance Organization Act)~~].

(F) - (I) (No change.)

(12) - (13) (No change.)

(b) - (c) (No change.)

§11.902. Prohibited Actions.

(a) (No change.)

(b) Pursuant to the Insurance Code §843.3045, an HMO may not refuse to contract with a nurse first assistant as defined by the Occupations Code §301.353, as added by Acts 2005, 79th Leg. R.S., ch. 966, sec. 1, as amended [~~§301.1525, Occupations Code~~], to be included in the HMO's provider network or refuse to reimburse the nurse first assistant for a covered service that a physician has requested the nurse first assistant to perform.

(c) An HMO may not by contract or any other method require a physician to use the services of a nurse first assistant as defined by the Occupations Code §301.353, as added by Acts 2005, 79th Leg. R.S., ch. 966, sec. 1, as amended [~~§301.1525, Occupations Code~~].

(d) - (e) (No change.)

§11.904. Provision of Services Related to Immunizations and Vaccinations.

(a) Pursuant to the Insurance Code Chapter 1353 [~~Article 21.53K~~], an HMO shall not require a physician to issue an immunization or vaccination protocol for an immunization or vaccination to be administered to an enrollee by a pharmacist.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604053
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER M. ACQUISITION OF, CONTROL OF, OR MERGER OF, A DOMESTIC HMO

28 TAC §11.1201, §11.1206

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance,

relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.1201. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Control (including the terms "controlling," "controlled by," and "under common control with")--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporation office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds irrevocable proxies representing, 10% or more of the voting securities or authority of any other person. This presumption may be rebutted by a showing made in the manner provided by the Insurance Code §823.010 [~~, Article 21.49-1, §3(i),~~] that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly, either alone or pursuant to an agreement with one or more other persons, such a controlling influence over the management or policies of an authorized health maintenance organization as to make it necessary or appropriate in the public interest or for the protection of the enrollees or shareholders of the health maintenance organization that the person be deemed to control the health maintenance organization.

(2) - (7) (No change.)

§11.1206. Exemptions.

(a) (No change.)

(b) A change consisting only of the substitution of management contractors under a contract with the health maintenance organization as provided for [~~defined~~] in the Insurance Code §843.105 [~~Act, §18,~~] shall be subject to the approval of the commissioner according to the provisions of [~~that section of~~] the Insurance Code §843.105 [~~Act~~] and shall be exempt from the provisions of this subchapter. No order of exemption is necessary for this purpose.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604054
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER N. HMO SOLVENCY SURVEILLANCE COMMITTEE PLAN OF OPERATION

28 TAC §11.1301, §11.1302

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §§62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence

of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1),843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.1301. Plan of Operation.

This plan of operation, hereinafter referred to as the plan, shall become effective upon written approval of the Texas Department of Insurance, hereinafter referred to as the department, as provided by the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~Texas Health Maintenance Organization Act, Insurance Code Chapters 20A and 843, hereinafter referred to as the Act~~]. As used in this subchapter, the committee shall be the solvency surveillance committee as provided for and defined in the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~], and the members shall be the members of the committee as provided for and defined in the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~].

§11.1302. Solvency Surveillance Committee.

(a) Members. The composition of the committee shall be in accordance with the Insurance Code §843.436.

(1) - (2) (No change.)

(3) A member shall serve until a successor is appointed unless such member's term is in conflict with the Insurance Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~], or unless a member misses two or more consecutive meetings or engages in willful misconduct, in which case the commissioner may remove the member. The committee shall make recommendations to the commissioner and the department to fill vacancies. Members shall not receive any remuneration or emolument of office

(4) (No change.)

(b) - (c) (No change.)

(d) Special or emergency meetings. The committee shall hold a special or emergency meeting promptly after receiving notice from the commissioner of the need for such meeting. In addition, a special meeting of the committee may be held at the request of a majority of the membership, which shall be polled by the chairman at the request of any two members seeking a special meeting. At such meetings, the committee, if appropriate, shall perform the following functions.

(1) - (3) (No change.)

(4) In addition to the powers described in paragraphs (1) - (3) of this subsection, the committee shall have and exercise such other powers as may be reasonably necessary to implement its powers and responsibilities under the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~].

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604055
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

SUBCHAPTER O. ADMINISTRATIVE PROCEDURES

28 TAC §11.1401, §11.1403

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must

be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.1401. Commissioner's Authority to Require Additional Information.

The commissioner may require additional information as needed to make any determination required by the Insurance Code[~~,~~] Chapters 1271 [~~20A~~] and 843, [~~or~~] this chapter, and applicable insurance laws and regulations of this state that apply to HMOs.

§11.1403. Requirement for Notifying Enrollees of Toll-free Telephone Number for Complaints about Psychiatric or Chemical Dependency Services of Private Psychiatric Hospitals, General Hospitals, and Chemical Dependency Treatment Centers.

Health Maintenance Organizations shall include in their next available newsletter or other general mailing to all enrollees following the effective date of this section, and shall include in information provided to new subscribers, the following notice:
Figure: 28 TAC §11.1403

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604056
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER Q. OTHER REQUIREMENTS

28 TAC §§11.1600, 11.1605, 11.1607

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider

Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.1600. Information to Prospective and Current Contract Holders and Enrollees.

(a) (No change.)

(b) The written or electronic plan description must be in a readable and understandable format that meets the requirements of §3.602 of this title (relating to Plain Language Requirements), by category, and must include a clear, complete and accurate description of these items in the following order:

(1) - (10) (No change.)

(11) a current list of physicians and providers, including behavioral health providers and substance abuse treatment providers, if applicable, updated on at least a quarterly basis. The list shall include the information necessary to fully inform prospective or current enrollees about the network, including names and locations of physicians and providers, a statement of limitations of accessibility and referrals to specialists, including any limitations imposed by a limited provider network, and a disclosure of which physicians and providers will not accept new enrollees or participate in closed provider networks serving only certain enrollees.

(A) (No change.)

(B) If an HMO does not limit an enrollee's selection of an obstetrician or gynecologist to the limited provider network to which that enrollee's primary care physician or provider belongs, it shall provide to current or prospective enrollees a notice in compliance with the Insurance Code Chapter 1451 Subchapter F [~~Article 21.53D~~] in substantially the following form: "ATTENTION FEMALE ENROLLEES: You have the right to select an OB-GYN to whom you have access without first obtaining a referral from your PCP. (Name of HMO) has opted not to limit your selection of an OB-GYN to your PCP's network. You are not required to select an OB-GYN. You may elect to receive your OB-GYN services from your PCP."

(C) - (E) (No change.)

(12) (No change.)

(c) - (f) (No change.)

§11.1605. Pharmaceutical Services.

(a) - (b) (No change.)

(c) An HMO that provides coverage for prescription drugs under an individual or group health benefit plan, except small employer health benefit plans as defined by the Insurance Code §1501.002, shall comply with the requirements of the Insurance Code Chapter 1369 Subchapter A [~~Article 21.53M,~~] and §21.3010 and §21.3011 of this title (relating to Definitions; Coverage of Off-Label Drugs and Minimum Standards of Coverage for Off-Label Drug Use).

(d) An HMO that provides coverage for prescription drugs or devices under an individual or group state-mandated health benefit plan shall comply with the requirements of the Insurance Code Chapter 1369 Subchapter C (Coverage of Prescription Contraceptive Drugs and Devices and Related Services) [~~Article 21.52L (Health Benefit Plan Coverage for Prescription Contraceptive Drugs and Devices and Related Services)~~].

(e) An HMO that provides coverage for prescription drugs under a group state-mandated health benefit plan and that utilizes one or more drug formularies to specify which prescription drugs the plan will cover shall comply with the requirements ofthe Insurance Code Chapter 1369 Subchapter B [~~Article 21.52J~~] and §§21.3020 - 21.3023 of this

title (relating to Definitions; Prescription Drug Formulary, Required Disclosure of Drug Formulary, Continuation of Benefits, and Nonformulary Prescription Drugs; Adverse Determination).

§11.1607. Accessibility and Availability Requirements.

(a) - (g) (No change.)

(h) An HMO is required to provide an adequate network for its entire service area. All covered services must be accessible and available so that travel distances from any point in its service area to a point of service are no greater than:

(1) (No change.)

(2) 75 miles for specialty care, specialty hospitals, and single healthcare service plan physicians or providers.

(i) Notwithstanding subsection (h) of this section, an HMO that has a contract with the Health and Human Services Commission is not required to meet the access requirements prescribed in this section for covered services provided to participants in the CHIP Perinatal Program.

(j) [~~(i)~~] If any covered health care service or a participating physician and provider is not available to an enrollee within the mileage radii specified in subsection (h)(1) and (2) of this section because physicians and providers are not located within such mileage radii, or if the HMO is unable to obtain contracts after good faith attempts, or physicians and providers meeting the minimum quality of care and credentialing requirements of the HMO are not located within the mileage radii, the HMO shall submit an access plan to the department for approval, at least 30 days before implementation in accordance with the filing requirements in §11.301 of this title (relating to Filing Requirements). The access plan shall include the following:

(1) the geographic area identified by county, city, ZIP code, mileage, or other identifying data in which services and/or physicians and providers are not available;

(2) for each geographic area identified as not having covered health care services and/or physicians or providers available, the reason or reasons that covered health care services and/or physicians and providers cannot be made available;

(3) a map, with key and scale, which identifies the areas in which such covered health care services and/or physicians and providers are not available;

(4) the HMO's plan for making covered health care services and/or physicians and providers available to enrollees in each geographic area identified;

(5) the names and addresses of the participating physicians and providers and a listing of the covered health care services to be provided through the HMO delivery network to meet the medical needs of the enrollees covered under the HMO's plan required under paragraph (4) of this subsection;

(6) the names and address of other physicians and providers and a listing of the specialties for any other health care services or physicians and providers to be made available in the geographic area in addition to those physicians and providers participating in the HMO delivery network listed under paragraph (5) of this subsection;

(7) the procedures to be followed by the HMO to assure that primary care physicians, general hospitals, specialists, special hospitals, psychiatric hospitals, diagnostic and therapeutic services, or single or limited health care service providers and all other mandated health care services are made available and accessible to enrollees in the geographic areas identified as being areas in which such covered health care services and/or physicians and providers are not available and accessible, and any plans of the HMO for attempting to develop an HMO delivery network through which covered health care services are available and accessible to enrollees in these geographic areas in the future; and

(8) any other information which is necessary to assess the HMO's plan.

(k) [~~(j)~~] The HMO may make arrangements with physicians or providers outside the service area for enrollees to receive a higher level of skill or specialty than the level which is available within the HMO service area such as, but not limited to, transplants, treatment of cancer, burns, and cardiac diseases. An HMO may not require an enrollee to travel out of the service area to receive such services, unless the HMO provides the enrollee with a written explanation of the benefits and detriments of in-area and out-of-area options.

(l) [~~(k)~~] The HMO shall not be required to expand services outside its service area to accommodate enrollees who live outside the service area, but work within the service area.

(m) [~~(l)~~] In accordance with the Insurance Code Chapter 1455 (Telemedicine and Telehealth) [~~Article 21.53F (Telemedicine)~~], each evidence of coverage or certificate delivered or issued for delivery by an HMO may provide enrollees the option to access covered health care services through a telehealth service or a telemedicine medical service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604057
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

SUBCHAPTER R. APPROVED NONPROFIT HEALTH CORPORATIONS

28 TAC §11.1702, §11.1703

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum

standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.1702. Requirements for Issuance of Certificate of Authority to ANHC.

(a) Prior to obtaining a certificate of authority under the Insurance Code[~~,~~] Chapter 844 (concerning Certification of Certain Nonprofit Health Corporations), an applicant ANHC must:

(1) comply with each requirement for the issuance of a certificate of authority imposed on an HMO under the Insurance Code[~~,~~] Chapters 1271 [~~20A~~] and 843; this chapter; and applicable insurance laws and regulations of this state; and

(2) (No change.)

(b) The commissioner shall grant a provisional certificate of authority to an applicant ANHC under the Insurance Code[~~,~~] Chapter 844, if:

(1) the applicant ANHC complies with each requirement for the issuance of a certificate of authority imposed on an HMO under the Insurance Code[~~,~~] Chapters 1271 [~~20A~~] and 843; this chapter; and applicable insurance laws and regulations of this state.

(2) - (4) (No change.)

(c) An ANHC with a certificate of authority or a provisional certificate of authority must comply with all the appropriate requirements that an HMO must comply with underthe Insurance Code[~~,~~] Chapters 1271 [~~20A~~] and 843; this chapter; and applicable insurance laws and regulations of this state in order to maintain a certificate of authority.

(d) (No change.)

§11.1703. Requirements for Agents of an ANHC Certificate of Authority Holder.

Any agent for an ANHC with a certificate of authority or a provisional certificate of authority shall be considered an HMO agent and shall comply with the requirements of the Insurance Code Chapter 4054 [~~Article 21.07-1~~] and Chapter 19 of this title (relating to Agent's Licensing), as applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604058
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

SUBCHAPTER S. SOLVENCY STANDARDS FOR MANAGED CARE ORGANIZATIONS PARTICIPATING IN MEDICAID

28 TAC §11.1801

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the

money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.1801. Entities Covered.

(a) As used in this subchapter, a managed care organization is an entity holding a certificate of authority to operate as an HMO under the Insurance Code Chapters 1271 [~~20A~~] and 843 [~~of the Texas Insurance Code~~] or as an approved nonprofit health corporation under [~~Chapter 844 of~~] the [~~Texas~~] Insurance Code Chapter 844.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604059
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER T. QUALITY OF CARE

28 TAC §11.1901, §11.1902

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires

approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.1901. Quality Improvement Structure for Basic and Limited Services HMOs.

(a) A basic or limited services HMO shall develop and maintain an ongoing quality improvement (QI) program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care and services and to pursue opportunities for improvement. Unless the HMO has no enrollees, the QI program shall include the active involvement of one or more enrollee(s) who are not employees of the HMO.

(b) The governing body is ultimately responsible for the QI program. The governing body shall:

(1) appoint a quality improvement committee (QIC) that shall include practicing physicians[~~,~~] and individual providers;and may include [~~at least~~] one or more enrollee(s) [~~enrollee~~] from throughout the HMO's service area. For purposes of this section, if an enrollee(s) is [~~the enrollee~~] appointed to the committee, the enrollee(s) may not be an employee of the HMO;

(2) - (5) (No change.)

(c) (No change.)

§11.1902. Quality Improvement Program for Basic and Limited Services HMOs.

The QI program for basic and limited services HMOs shall be continuous and comprehensive, addressing both the quality of clinical care and the quality of services. The HMO shall dedicate adequate resources, such as personnel and information systems, to the QI program.

(1) - (3) (No change.)

(4) Credentialing. An HMO shall implement a documented process for selection and retention of contracted physicians and providers. The credentialing process required by this section must comply with the standards promulgated by the National Committee for Quality Assurance (NCQA), to the extent that those standards do not conflict with other laws of this state.[~~, which includes the following elements, as applicable:~~]

[~~(A) The HMO's policies and procedures shall clearly indicate the physician or individual provider directly responsible for the credentialing program and shall include a description of his or her participation.~~]

[~~(B) HMOs shall develop written criteria for credentialing of physicians and providers and written procedures for verifications.~~]

[~~(i)~~ The HMO shall credential all physicians and providers, including advanced practice nurses, and physician assistants, if they are listed in the provider directory. An HMO shall credential each physician or individual provider who is a member of a contracting group, such as an independent physician association or medical group.~~]~~

[~~(ii)~~ Policies and procedures must include the following physicians' and providers' rights:~~]~~

[~~(I)~~ the right to review information submitted to support the credentialing application;~~]~~

[~~(II)~~ the right to correct erroneous information;~~]~~

[~~(III)~~ the right, upon request, to be informed of the status of the credentialing or recredentialing application; and~~]~~

[~~(IV)~~ the right to be notified of these rights.~~]~~

[~~(iii)~~ An HMO is not required to credential:~~]~~

[~~(I)~~ hospital-based physicians or individual providers, including advanced practice nurses and physician assistants unless listed in the provider directory;~~]~~

[(II) individual providers who furnish services only under the direct supervision of a physician or another individual provider except as specified in clause (i) of this subparagraph;]

[(III) students, residents, or fellows;]

[(IV) pharmacists; or]

[(V) opticians.]

[(iv) An HMO must complete the initial credentialing process, including application, verification of information, and a site visit (if applicable), before the effective date of the initial contract with the physician or provider.]

[(v) Policies and procedures shall include a provision that applicants be notified of the credentialing or recredentialing decision no later than 60 calendar days after the credentialing committee's decision.]

[(vi) An HMO shall have written policies and procedures for suspending or terminating affiliation with a contracting physician or provider, including an appeals process, pursuant to Insurance Code §§843.306 - 843.309.]

[(vii) The HMO shall have a procedure for the ongoing monitoring of physician and provider performance between periods of recredentialing and shall take appropriate action when it identifies occurrences of poor quality. Monitoring shall include:]

[(I) Medicare and Medicaid sanctions: the HMO must determine the publication schedule or release dates applicable to its physician and provider community; the HMO is responsible for reviewing the information within 30 calendar days of its release;]

[(II) Information from state licensing boards regarding sanctions or licensure limitations; and]

[(III) Complaints.]

[(viii) The HMO's procedures shall ensure that selection and retention criteria do not discriminate against physicians or providers who serve high-risk populations or who specialize in the treatment of costly conditions. Procedures shall also include a provision that credentialing and recredentialing decisions are not based solely on an applicant's race, ethnic/national identity, gender, age, sexual orientation or the types of procedures or types of patients.]

[(ix) The HMO shall have a procedure for notifying licensing or other appropriate authorities when a physician's or provider's affiliation is suspended or terminated due to quality of care concerns.]

[(C) Initial credentialing process for physicians and individual providers shall include the following:]

[(i) Physicians, advanced practice nurses and physician assistants shall complete the standardized credentialing application adopted in §21.3201 of this title (relating to the Texas Standardized Credentialing Application for Physicians, Advanced Practice Nurses and Physician Assistants) and individual providers shall complete an application which includes a work history covering at least five years, a statement by the applicant regarding any limitations in ability to perform the functions of the position, history of loss of license and/or felony convictions; and history of loss or limitation of privileges, sanctions or other disciplinary activity, lack of current illegal drug use, current professional liability insurance coverage information, and information on whether the individual provider will accept new patients from the HMO. This does not preclude an HMO from using the standardized credentialing application form specified in §21.3201 of this title for credentialing of individual providers. The completion date on the application shall be within 180 calendar days prior to the date the credentialing committee deems a physician or individual provider eligible for initial credentialing.]

[(ii) The HMO shall verify the following from primary sources and shall include evidence of verification in the credentialing files:]

[(I) A current license to practice in the State of Texas and information on sanctions or limitations on licensure. The primary source for verification shall be the state licensing agency or board for Texas, and the license and sanctions must be verified within 180 calendar days prior to the date the credentialing committee deems a physician or individual provider eligible for initial credentialing. The license must be in effect at the time of the credentialing decision.]

[(II) Education and training, including evidence of graduation from an appropriate professional school and completion of a residency or specialty training, if applicable. Primary source verification shall be sought from the appropriate schools and training facilities or the American Medical Association MasterFile. If the state licensing board, agency, or specialty board verifies education and training with the physician's or individual provider's schools and facilities, evidence of current state licensure or board certification shall also serve as primary source verification of education and training.]

[(III) Board certification, if the physician or individual provider indicates that he/she is board certified on the application. The HMO may obtain primary source verification from the American Board of Medical Specialties Compendium, the American Osteopathic Association, the American Medical Association MasterFile, or from the specialty boards, and the HMO must use the most recent available source.]

[(IV) Valid Drug Enforcement Agency (DEA) or Department of Public Safety (DPS) Controlled Substances Registration Certificate, if applicable. These must be in effect at the time of the credentialing decision, and the HMO may verify them by any one of the following means:]

[(-a-) copy of the DEA or DPS certificate;]

[(-b-) visual inspection of the original certificate;]

[(-c-) confirmation with DEA or DPS;]

[(-d-) entry in the National Technical Information Service database; or

[(-e-) entry in the American Medical Association Physician MasterFile.]

[(iii) The HMO shall verify within 180 calendar days prior to the date of the credentialing decision and shall include in the physician's or individual provider's credentialing file the following:]

[(I) Past five-year history of professional liability claims that resulted in settlements or judgments paid by or on behalf of the physician or individual provider, which the HMO may obtain from the professional liability carrier or the National Practitioner Data Bank;]

[(II) Information on previous sanction activity by Medicare and Medicaid which the HMO may obtain from one of the following:]

[(-a-) National Practitioner Data Bank;]

[(-b-) Cumulative Sanctions Report available over the internet;]

[(-c-) Medicare and Medicaid Sanctions and Reinstatement Report distributed to federally contracting HMOs;]

[(-d-) state Medicaid agency or intermediary and the Medicare intermediary;]

[(-e-) Federation of State Medical Boards;]

[(-f-) Federal Employees Health Benefits Program department record published by the Office of Personnel Management, Office of the Inspector General; or]

[(-g-) entry in the American Medical Association Physician MasterFile.]

[(iv) The HMO shall perform a site visit to the offices of each primary care physician or individual primary care provider, obstetrician-gynecologist, primary care dentist, and high-volume behavioral health physician or individual behavioral health provider as part of the initial credentialing process. In addition, the HMO shall have written procedures for determining high-volume behavioral health physicians or individual behavioral health providers. If physicians or individual providers are part of a group practice that shares the same office, the HMO may perform one visit to the site for all physicians or individual providers in the group practice, as well as for new physicians or individual providers who subsequently join the group practice. The HMO shall make the site visit assessment available to the department for review. The HMO shall have a process to track the relocation of and the opening of additional office sites for primary care physicians and individual primary care providers, obstetrician-gynecologists, primary care dentists, and high-volume behavioral health physicians or individual behavioral health providers as they open.]

[(v) Site visits shall consist of an evaluation of the site's accessibility, appearance, appointment availability, and space, using standards approved by the HMO. If a physician or individual provider offers services that require certification or licensure, such as laboratory or radiology services, the physician or individual provider shall have the current certification or licensure available for review at the site visit. In addition, as a result of the site visits, the HMO shall determine whether the site conforms to the HMO's standards for record organization, documentation, and confidentiality practices. Should the site not conform to the HMO's standards, the HMO shall require a corrective action plan and perform a follow-up site visit every six months until the site complies with the standards.]

[(D) The HMO shall have written procedures for recredentialing physicians and individual providers at least every three years through a process that updates information obtained in initial credentialing.]

[(i) Recredentialing will include a current and signed attestation that must be completed within 180 days prior to the date the credentialing committee deems a physician or individual provider eligible for recredentialing with the following factors:]

[(I) reasons for any inability to perform the essential functions of the position, with or without accommodation;]

[(II) lack of current illegal drug use;]

[(III) history of loss or limitation of privileges or disciplinary activity;]

[(IV) current professional liability insurance coverage; and]

[(V) correctness and completeness of the application.]

[(ii) Recredentialing procedures must be completed within 180 days prior to the date the credentialing committee deems a physician or individual provider eligible for recredentialing and shall include the following processes:]

[(I) Reverification of the following from the primary sources:]

[(-a-) Licensure and information on sanctions or limitations on licensure;]

[(-b-) Board certification:]

[(-1-) if the physician or individual provider was due to be recertified; or]

[(-2-) if the physician or individual provider indicates that he or she has become board certified since the last time he or she was credentialed or recredentialed; and]

[(-c-) Drug Enforcement Agency (DEA) or Department of Public Safety (DPS) Controlled Substances Registration Certificate, if applicable. These may be reverified by any one of the following means:]

[(-1-) copy of the DEA or DPS certificate;]

[(-2-) visual inspection of the original certificate;]

[(-3-) confirmation with DEA or DPS;]

[(-4-) entry in the National Technical Information Service database; or]

[(-5-) entry in the American Medical Association Physician MasterFile.]

[(II) Review of updated history of professional liability claims in accordance with the verification sources and time limits specified in subparagraph (C)(iii) of this paragraph.]

[(E) The credentialing process for institutional providers shall include the following:]

[(i) Evidence of state licensure;]

[(ii) Evidence of Medicare certification;]

[(iii) Evidence of other applicable state or federal requirements, e.g., Bureau of Radiation Control certification for diagnostic imaging centers, certification for community mental health centers from the Texas Department of Mental Health and Mental Retardation or its successor agency, CLIA (Clinical Laboratory Improvement Amendments of 1988) certification for laboratories;]

[(iv) Evidence of accreditation by a national accrediting body, as applicable; the HMO shall determine which national accrediting bodies are appropriate for different types of institutional providers. The HMO's written policies and procedures must state which national accrediting bodies it accepts; and]

[(v) Evidence of on-site evaluation of the institutional provider against the HMO's written standards for participation if the provider is not accredited by the national accrediting body required by the HMO.]

[(F) The HMO procedures shall provide for recredentialing of institutional providers at least every three years through a process that updates information obtained for initial credentialing as set forth in subparagraph (E)(i) - (iv) of this paragraph.]

[(G) Under Insurance Code Article 20A.39, the standards adopted in this paragraph must comply with the standards promulgated by the National Committee for Quality Assurance (NCQA) to the extent that those standards do not conflict with other laws of the state. Therefore, if the NCQA standards change and there is a difference between the standards specified in this paragraph and the NCQA

~~standards, the NCQA standards shall prevail to the extent that those standards do not conflict with the other laws of this state.]~~

(5) - (6) (No change.)

(7) Delegation of Credentialing.

[~~(A)~~] If the HMO delegates credentialing functions to other entities, its credentialing process must comply with the standards promulgated by the National Committee for Quality Assurance (NCQA), to the extent that those standards do not conflict with other laws of this state.[~~it shall have:~~]

~~[(i) a process for developing delegation criteria and for performing pre-delegation and annual audits;]~~

~~[(ii) a delegation agreement;]~~

~~[(iii) a monitoring plan; and]~~

~~[(iv) a procedure for termination of the delegation agreement for non-performance.]~~

~~[(B) If the HMO delegates credentialing functions to an entity accredited by the NCQA, the annual audit of that entity is not required for the function(s) listed in the NCQA accreditation; however, evidence of this accreditation shall be made available to the department for review.]~~

~~[(C) The HMO shall maintain:]~~

~~[(i) documentation of pre-delegation and annual audits;]~~

~~[(ii) executed delegation agreements;]~~

~~[(iii) semi-annual reports received from the delegated entities;]~~

~~[(iv) evidence of evaluation of the reports;]~~

~~[(v) current rosters or copies of signed contracts with physicians and individual providers who are affected by the delegation agreement; and]~~

~~[(vi) documentation of ongoing monitoring and shall make it available to the department for review.]~~

~~[(D) Credentialing files maintained by the other entities to which the HMO has delegated credentialing functions shall be made available to the department for examination upon request.]~~

~~[(E) In all cases, the HMO shall maintain the right to approve credentialing, suspension, and termination of physicians and providers.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604060
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER V. STANDARDS FOR COMMUNITY MENTAL HEALTH CENTERS

28 TAC §11.2103

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c)

provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.2103. Requirements for Issuance of Certificate of Authority to a CHMO.

(a) Prior to obtaining a certificate of authority under Section 534.101[~~,~~] of the Health and Safety Code (concerning Health Maintenance Organizations Certificate of Authority), an applicant CHMO must comply with each requirement for the issuance of a certificate of authority imposed on a limited health care service plan under the Insurance Code Chapters 1271 [~~20A~~] and 843; this chapter; and applicable insurance laws and regulations of this state.

(b) A CHMO with a certificate of authority must comply with all the appropriate requirements that a limited health care service plan must comply with under the Insurance Code Chapters 1271 [~~20A~~] and 843; this chapter; and applicable insurance laws and regulations of this state to maintain a certificate of authority. A CHMO shall be subject to the same statutes and rules as a limited service HMO and considered a limited service HMO for purposes of regulation and regulatory enforcement.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604061
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER W. SINGLE SERVICE HMOS

28 TAC §11.2201, §11.2207

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission

may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151,843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.2201. General Provisions.

(a) (No change.)

(b) Each single service HMO schedule of enrollee copayments shall specify an appropriate description of covered services and benefits, as required under §11.506 of this title (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate), and may specify recognized procedures or other information which is used for the purpose of maintaining a statistical reporting system[, ~~as required under §11.1601 of this title (relating to Organization of an HMO)~~].

(c) - (d) (No change.)

§11.2207. Quality Improvement Structure and Program for Single Service HMOs.

(a) A single service HMO shall develop and maintain an ongoing quality improvement (QI) program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care and services and to pursue opportunities for improvement. Unless the HMO has no enrollees, the QI program shall include the active involvement of one or more enrollee(s) who are not employees of the HMO.

(b) The governing body is ultimately responsible for the QI program. The governing body shall:

(1) appoint a QI committee (QIC) that shall include practicing physicians[~~,~~] and individual providers, and may include [~~at least~~] one or more enrollee(s) [~~enrollee~~] from throughout the HMO's service area. For purposes of this section, if an enrollee(s) is [~~the enrollee~~] appointed to the committee, the enrollee(s) may not be an employee of the HMO;

(2) - (5) (No change.)

(c) (No change.)

(d) The QI program for single service HMOs shall be continuous and comprehensive, addressing both the quality of clinical care and the quality of services. The HMO shall dedicate adequate resources, such as personnel and information systems, to the QI program.

(1) - (3) (No change.)

(4) Credentialing. An HMO shall implement a documented process for selection and retention of contracted physicians and providers. The credentialing process required by this section must comply with the standards promulgated by the National Committee for Quality Assurance (NCQA), to the extent that those standards do not conflict with other laws of this state.[~~, which includes the following elements, as applicable:~~]

[~~(A) The HMO's policies and procedures shall clearly indicate the physician or individual provider directly responsible for the credentialing program and shall include a description of his or her participation.~~]

[~~(B) HMOs shall develop written criteria for credentialing of physicians and providers and written procedures for verifications.~~]

[~~(i)~~ ~~The HMO shall credential all physicians and providers including advanced practice nurses and physician assistants, if they are listed in the provider directory. An HMO shall credential each physician and individual provider who is a member of a contracting group, such as an independent practice association or medical group.~~]

[~~(ii)~~ ~~Policies and procedures must include the following physicians' and providers' rights:~~]

[~~(I)~~ ~~the right to review information submitted to support the credentialing application;~~]

[~~(II)~~ ~~the right to correct erroneous information;~~]

[~~(III)~~ ~~the right, upon request, to be informed of the status of the credentialing or recredentialing application; and~~]

[~~(IV)~~ ~~the right to be notified of these rights.~~]

[~~(iii)~~ ~~An HMO is not required to credential:~~]

[~~(I)~~ ~~hospital-based physicians or individual providers, including advanced practice nurses and physician assistants unless listed in the provider directory;~~]

[~~(II)~~ ~~individual providers who furnish services only under the direct supervision of a physician or another individual provider except as specified in clause (i) of this subparagraph;~~]

[~~(III)~~ ~~students, residents, or fellows;~~]

[~~(IV)~~ ~~pharmacists; or~~]

[~~(V)~~ ~~opticians.~~]

[~~(iv)~~ ~~An HMO must complete the initial credentialing process, including application, verification of information, and a site visit (if applicable), before the effective date of the initial contract with the physician or provider.~~]

[~~(v)~~ ~~Policies and procedures shall include a provision that applicants be notified of the credentialing or recredentialing decision no later than 60 calendar days after the credentialing committee's decision.~~]

[~~(vi)~~ ~~An HMO shall have written policies and procedures for suspending or terminating affiliation with a contracting physician or provider, including an appeals process, pursuant to Insurance Code §§843.306 - 843.309.~~]

[~~(vii)~~ ~~The HMO shall have a procedure for the ongoing monitoring of physician and provider performance between periods of recredentialing and shall take appropriate action when it identifies occurrences of poor quality. Monitoring shall include:~~]

[~~(I)~~ ~~Medicare and Medicaid sanctions: the HMO must determine the publication schedule or release dates applicable to its physician and provider community; the HMO is responsible for reviewing the information within 30 calendar days of its release;~~]

[~~(II)~~ ~~Information from state licensing boards regarding sanctions or licensure limitations; and~~]

[~~(III)~~ ~~Complaints.~~]

[~~(viii)~~ ~~The HMO's procedures shall ensure that selection and retention criteria do not discriminate against physicians~~

or providers who serve high-risk populations or who specialize in the treatment of costly conditions. Procedures shall also include a provision that credentialing and recredentialing decisions are not based solely on an applicant's race, ethnic/national identity, gender, age, sexual orientation, or the types of procedures or types of patients.]

[(ix) The HMO shall have a procedure for notifying licensing or other appropriate authorities when a physician's or provider's affiliation is suspended or terminated due to quality of care concerns.]

[(C) Initial credentialing process for physicians and individual providers shall include the following:]

[(i) Physicians, advanced practice nurses and physician assistants shall complete the standardized credentialing application adopted in §21.3201 of this title (relating to the Texas Standardized Credentialing Application for Physicians, Advanced Practice Nurses and Physician Assistants) and individual providers shall complete an application which includes a work history covering at least five years, a statement by the applicant regarding any limitations in ability to perform the functions of the position, history of loss of license and/or felony convictions; and history of loss or limitation of privileges, sanctions or other disciplinary activity, lack of current illegal drug use, current professional liability insurance coverage information, and information on whether the individual provider will accept new patients from the HMO. This does not preclude an HMO from using the standardized credentialing application form specified in §21.3201 of this title for credentialing of individual providers. The completion date on the application shall be within 180 calendar days prior to the date the credentialing committee deems a physician or individual provider eligible for initial credentialing.]

[(ii) The HMO shall verify the following from primary sources and shall include evidence of verification in the credentialing files:]

[(I) A current license to practice in the State of Texas and information on sanctions or limitations on licensure. The primary source for verification shall be the state licensing agency or board for Texas, and the license and sanctions must be verified within 180 calendar days prior to the date the credentialing committee deems a physician or individual provider eligible for initial credentialing. The license must be in effect at the time of the credentialing decision.]

[(II) Education and training, including evidence of graduation from an appropriate professional school and completion of a residency or specialty training, if applicable. Primary source verification shall be sought from the appropriate schools and training facilities or the American Medical Association MasterFile. If the state licensing board, agency, or specialty board verifies education and training with the physician's or individual provider's schools and facilities, evidence of current state licensure or board certification shall also serve as primary source verification of education and training.]

[(III) Board certification, if the physician or individual provider indicates that he/she is board certified on the application. The HMO may obtain primary source verification from the American Board of Medical Specialties Compendium, the American Osteopathic Association, the American Medical Association MasterFile, or from the specialty boards, and the HMO must use the most recent available source.]

[(IV) Valid Drug Enforcement Agency (DEA) or Department of Public Safety (DPS) Controlled Substances Registration Certificate, if applicable. These must be in effect at the time of the credentialing decision, and the HMO may verify them by any one of the following means:]

[(-a-) copy of the DEA or DPS certificate;]

[(-b-) visual inspection of the original certificate;]

[(-c-) confirmation with DEA or DPS;]

[(-d-) entry in the National Technical Information Service database; or]

[(-e-) entry in the American Medical Association Physician MasterFile.]

[(iii) The HMO shall verify within 180 calendar days prior to the date of the credentialing decision and shall include in the physician's or individual provider's credentialing file the following:]

[(I) Past five-year history of professional liability claims that resulted in settlements or judgments paid by or on behalf of the physician or individual provider, which the HMO may obtain from the professional liability carrier or the National Practitioner Data Bank;]

[(II) Information on previous sanction activity by Medicare and Medicaid which the HMO may obtain from one of the following:]

[(-a-) National Practitioner Data Bank;]

[(-b-) Cumulative Sanctions Report available over the internet;]

[(-c-) Medicare and Medicaid Sanctions and Reinstatement Report distributed to federally contracting HMOs;]

[(-d-) state Medicaid agency or intermediary and the Medicare intermediary;]

[(-e-) Federation of State Medical Boards;]

[(-f-) Federal Employees Health Benefits Program department record published by the Office of Personnel Management, Office of the Inspector General;]

[(-g-) entry in the American Medical Association Physician MasterFile.]

[(iv) The HMO shall perform a site visit to the offices of each primary care physician or individual provider, obstetrician-gynecologist, primary care dentist, and high-volume behavioral health physician or individual provider as part of the initial credentialing process. In addition, the HMO shall have written procedures for determining high-volume behavioral health physicians and individual providers. If physicians or individual providers are part of a group practice that shares the same office, the HMO may perform one visit to the site for all physicians or individual providers in the group practice, as well as for new physicians or individual providers who subsequently join the group practice. The HMO shall make the site visit assessment available to the department for review. The HMO shall have a process to track the opening of new physician or individual provider offices. The HMO shall perform a site visit of each new office site of primary care physicians and individual providers, obstetrician-gynecologists, primary care dentists, and high-volume behavioral health physicians or individual providers as they open.]

[(v) Site visits shall consist of an evaluation of the site's accessibility, appearance, appointment availability, and space, using standards approved by the HMO. If a physician or individual provider offers services that require certification or licensure, such as laboratory or radiology services, the physician or individual provider shall have the current certification or licensure available for review at the site visit. In addition, as a result of the site visits, the HMO shall determine whether the site conforms to the HMO's standards for record organization, documentation, and confidentiality practices. Should the site not conform to the HMO's standards, the HMO shall require a corrective action plan and perform a follow-up site visit every six months until the site complies with the standards.]

[(D) The HMO shall have written procedures for recredentialing physicians and individual providers at least every three years through a process that updates information obtained in initial credentialing.]

[(i) Recredentialing will include a current and signed attestation that must be completed within 180 days prior to the date the credentialing committee deems a physician or individual provider eligible for recredentialing with the following factors:]

[(I) reasons for any inability to perform the essential functions of the position, with or without accommodation;]

[(II) lack of current illegal drug use;]

[(III) history of loss or limitation of privileges or disciplinary activity;]

[(IV) current professional liability insurance coverage; and]

[(V) correctness and completeness of the application.]

[(ii) Recredentialing procedures must be completed within 180 days prior to the date the credentialing committee deems a physician or individual provider eligible for recredentialing and shall include the following processes:]

[(I) Reverification of the following from the primary sources:]

[(-a-) Licensure and information on sanctions or limitations on licensure;]

[(-b-) Board certification:]

[(-1-) if the physician or individual provider was due to be recertified; or]

[(-2-) if the physician or individual provider indicates that he or she has become board certified since the last time he or she was credentialed or recredentialed; and]

[(-c-) Drug Enforcement Agency (DEA) or Department of Public Safety (DPS) Controlled Substances Registration Certificate, if applicable. These may be reverified by any one of the following means:]

[(-1-) copy of the DEA or DPS certificate;]

[(-2-) visual inspection of the original certificate;]

[(-3-) confirmation with DEA or DPS;]

[(-4-) entry in the National Technical Information Service database; or]

[(-5-) entry in the American Medical Association Physician MasterFile.]

[(II) Review of updated history of professional liability claims, and sanction and restriction information from Medicare and Medicaid in accordance with the verification sources and time limits specified in subparagraph (C)(iii) of this paragraph.]

[(E) The credentialing process for institutional providers shall include the following:]

[(i) Evidence of state licensure;]

[(ii) Evidence of Medicare certification;]

[(iii) Evidence of other applicable state or federal requirements, e.g., Bureau of Radiation Control certification for diagnostic imaging centers, certification for community mental health centers from Texas Mental Health and Mental Retardation or its successor agency, CLIA (Clinical Laboratory Improvement Amendments of 1988) certification for laboratories;]

[(iv) Evidence of accreditation by a national accrediting body, as applicable; the HMO shall determine which national accrediting bodies are appropriate for different types of institutional providers. The HMO's written policies and procedures must state which national accrediting bodies it accepts;]

[(v) Evidence of on-site evaluation of the institutional provider against the HMO's written standards for participation if the provider is not accredited by the national accrediting body required by the HMO.]

[(F) The HMO's procedures shall provide for recredentialing of institutional providers at least every three years through a process that updates information obtained for initial credentialing as set forth in subparagraph (E)(i) - (iv) of this paragraph.]

[(G) Under Insurance Code Article 20A.39, the standards adopted in this paragraph must comply with the standards promulgated by the National Committee for Quality Assurance (NCQA) to the extent that those standards do not conflict with other laws of the state. Therefore, if the NCQA standards change and there is a difference between the standards specified in this paragraph and the NCQA standards, the NCQA standards shall prevail to the extent that those standards do not conflict with the other laws of this state.]

(5) - (6) (No change.)

(7) Delegation of Credentialing.

[(A)] If the HMO delegates credentialing functions to other entities, its credentialing process must comply with the standards promulgated by the National Committee for Quality Assurance (NCQA), to the extent that those standards do not conflict with other laws of this state.[it shall have:]

[(i) a process for developing delegation criteria and for performing pre-delegation and annual audits;]

[(ii) a delegation agreement;]

[(iii) a monitoring plan; and]

[(iv) a procedure for termination of the delegation agreement for non-performance.]

[(B) If the HMO delegates credentialing functions to an entity accredited by the NCQA, the annual audit of that entity is not required for the function(s) listed in the NCQA accreditation; however, evidence of this accreditation shall be made available to the department for review.]

[(C) The HMO shall maintain:]

[(i) documentation of pre-delegation and annual audits;]

[(ii) executed delegation agreements;]

[(iii) semi-annual reports received from the delegated entities;]

[(iv) evidence of evaluation of the reports;]

[(v) current rosters or copies of signed contracts with physicians and individual providers who are affected by the delegation agreement; and]

~~*[(vi)* documentation of ongoing monitoring and shall make it available to the department for review.]~~

~~[(D) Credentialing files maintained by the other entities to which the HMO has delegated credentialing functions shall be made available to the department for examination upon request.]~~

~~[(E) In all cases, the HMO shall maintain the right to approve credentialing, suspension, and termination of physicians and providers.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604062
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER X. PROVIDER SPONSORED ORGANIZATIONS

28 TAC §11.2303, §11.2315

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.2303. Application for Certificate of Authority.

(a) (No change.)

(b) Prior to obtaining a certificate of authority under the Insurance Code[~~,~~] Chapter 843 [~~20A~~], an applicant PSO must comply with each requirement for the issuance of a certificate of authority imposed on an HMO under the Insurance Code[~~,~~] Chapters 1271 [~~20A~~] and 843, 28 Texas Administrative Code Chapter 11 and other applicable insurance laws and regulations of this state except where preempted by federal law.

(c) (No change.)

§11.2315. Application of Other Insurance Laws.

Subject to the provisions of this subchapter, the holder of a certificate of authority issued under this subchapter has all the powers granted to and duties imposed on a health maintenance organization under the Insurance Code Chapter 843 and applicable [~~Texas Health Maintenance~~

~~Organization~~ ~~Act~~ ~~(Insurance~~ ~~Code,~~ ~~Chapter~~ ~~843)~~ ~~and~~ ~~the~~] insurance laws and regulations of this state that apply to HMOs, and is subject to regulation and regulatory enforcement under these laws in the same manner as a health maintenance organization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604063
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER Y. LIMITED SERVICE HMOS

28 TAC §§11.2402, 11.2405, 11.2406

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.2402. General Provisions.

(a) (No change.)

(b) Each limited service HMO schedule of enrollee copayments shall specify an appropriate description of covered services and benefits, as required under §11.506 of this title (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate), and may specify recognized procedure codes or other information used for maintaining a statistical reporting system[~~, as required under §11.1902 of this title (relating to Quality Improvement Program for Basic and Limited Services HMOs)~~].

(c) - (d) (No change.)

§11.2405. Minimum Standards, Mental Health and Chemical Dependency Services and Benefits.

(a) (No change.)

(b) Each limited service HMO evidence of coverage providing coverage for mental health/chemical dependency services and benefits shall provide primary mental health/chemical dependency services and benefits, including:

(1) For treatment of serious mental illness (as defined in the [~~Texas~~] Insurance Code Chapter 1355 Subchapter A [~~Article 3.51-14~~]),

up to 45 inpatient days per year, up to 60 outpatient visits per year, which include assessment/screening, treatment planning, and crisis services.

(2) - (4) (No change.)

(c) (No change.)

§11.2406. Minimum Standards, Long Term Care Services and Benefits.

Each limited service HMO evidence of coverage providing long-term care services and benefits shall comply with the Insurance Code Chapter 1651 [~~Article 3.70-12~~] and §§3.3801, et seq. of this title (relating to Standards for Long-Term Care Insurance Coverage Under Individual and Group Policies).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604064
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER Z. POINT-OF-SERVICE RIDERS

28 TAC §§11.2501 - 11.2503

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.2501. Definitions.

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context indicates otherwise.

(1) (No change.)

(2) Corresponding benefits--Benefits provided under a point-of-service (POS) rider or the indemnity portion of a point-of-service (POS) plan, as defined in [~~Article 3.64(a)(4) and §843.108 of~~] the Insurance Code §1273.001 and §843.108, that conform to the nature and kind of coverage provided to an enrollee under the HMO portion of a POS [~~point-of-service~~] plan.

(3) - (13) (No change.)

§11.2502. Issuance of Point-of-Service [~~service~~] Riders.

An HMO may issue a POS rider plan only if the HMO meets all of the applicable requirements set forth in this section.

(1) - (2) (No change.)

(3) Renewability and discontinuance of POS rider plans.

(A) POS rider plans issued under this subchapter are guaranteed renewable if the plan is:

(i) a small employer plan, pursuant to [~~Article 26.23 of~~] the Insurance Code §1501.108;

(ii) a large employer plan, pursuant to [~~Article 26.86 of~~] the Insurance Code §1501.108;

(iii) - (iv) (No change.)

(B) (No change.)

(C) An HMO that discontinues existing POS rider plans in order to bring the HMO into compliance with the 10% cap:

(i) shall offer, if the discontinued plan is issued to:

(I) a small employer group, to each employer, the option to purchase other small employer coverage offered by the small employer carrier at the time of the discontinuation, pursuant to [~~Article 26.24(d) of~~] the Insurance Code §1501.109(d);

(II) a large employer group, to each employer, the option to purchase any other large employer coverage offered by the large employer carrier at the time of the discontinuation, pursuant to [~~Article 26.87(d) of~~] the Insurance Code §1501.109(d);

(III) - (IV) (No change.)

(ii) (No change.)

(4) - (5) (No change.)

§11.2503. Coverage Relating to POS Rider Plans.

(a) - (c) (No change.)

(d) An HMO that issues or offers to issue a POS rider plan is subject, to the same extent as the HMO is subject in issuing any other health plan product, to all applicable provisions of the Insurance Code Chapters [~~20A and~~] 843, 541, 542, 543, 544, and 547 [~~and Articles 21.21, 21.21A, 21.21-1, 21.21-2, 21.21-5 and 21.21-6 of the Code~~].

(e) A POS rider plan offered under this subchapter must contain:

(1) a POS rider that:

(A) - (L) (No change.)

(M) if it is issued to a group, shall contain provisions that comply with [~~Article 3.51-6 Sec. 1(d)(2)(vii) - (xiii) of~~] the Insurance Code Chapter 1251 Subchapter C; and

(N) if it is issued to an individual, shall contain provisions that comply with [~~Article 3.70-3(A)(5) - (11) of~~] the Insurance Code §§1201.211 - 1201.217.[~~;~~]

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604065

Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER AA. DELEGATED ENTITIES

28 TAC §§11.2601 - 11.2604, 11.2608, 11.2609

The amendments are proposed pursuant to the Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) specifies the definition of adverse determination. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner. The Insurance Code §1271.104 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1301.0046 provides that an insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care

services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The proposed amendments affect regulation pursuant to the following statutes: Insurance Code §§843.002(1), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1301.0046, 1369.003, 1452.006, and the Health and Safety Code §62.051(c) and (d).

§11.2601. General Provisions.

(a) Purpose. The purpose of this subchapter is to set forth the requirements that must be met by any HMO that delegates any function as described in the [~~Texas~~] Insurance Code Chapters 843 and 1272, this chapter, and applicable insurance laws and regulations of this state that apply to HMOs [~~Art. 20A.18C~~]. These requirements are designed to ensure that a delegating HMO:

(1) - (3) (No change.)

(b) Severability. Where any terms or sections of this subchapter are determined by a court of competent jurisdiction to be inconsistent with the Insurance Code Chapters 843 and 1272 and applicable insurance laws of this state related to health maintenance organization regulation [~~Act~~], as identified by this subchapter, the Insurance Code Chapters 843 and 1272 and applicable insurance laws of this state that apply to HMOs [~~Act~~] will apply and the remaining terms and provisions of this subchapter shall continue in effect.

(c) (No change.)

§11.2602. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

~~[(1) Act--The HMO Act, Insurance Code, Chapters 20A and 843.]~~

(1) [~~(2)~~] Delegated entity--An entity, other than an HMO authorized to do business under the Insurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~], that by itself, or through subcontracts with one or more entities, undertakes to arrange for or to provide medical care or health care to an enrollee in exchange for a predetermined payment on a prospective basis and that accepts responsibility to perform on behalf of the HMO any function regulated by theInsurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~]. The term does not include an individual physician or a group of employed physicians practicing medicine under one federal tax identification number and whose total claims paid to providers not employed by the group is less than 20 percent of the total collected revenue of the group calculated on a calendar year basis.

(2) [~~(3)~~] Delegated network--Any delegated entity that assumes total financial risk for more than one of the following categories of health care services: medical care, hospital or other institutional services, or prescription drugs, as defined by Section 551.003, Occupations Code. The term does not include a delegated entity that shares risk for a category of services with an HMO.

(3) [~~(4)~~] Delegated third party--A third party other than a delegated entity that contracts with a delegated entity, either directly or through another third party, to:

(A) accept responsibility to perform any function regulated by the Insurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~]; or

(B) receive, handle, or administer funds, if the receipt, handling, or administration of the funds is directly or indirectly related to a function regulated by the Insurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~].

(4) [~~(5)~~] Health care--Any services, including the furnishing to any individual of pharmaceutical services, medical, chiropractic, or dental care, or hospitalization, or incident to the furnishing of such services, care, or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

§11.2603. Requirements for Delegation by HMOs.

(a) Any delegation of any function pursuant to the [~~Texas~~] Insurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Art. 20A.18C~~] by an HMO shall comply with this subchapter.

(b) - (d) (No change.)

(e) The department may require an HMO to immediately terminate any delegation agreement to ensure that the HMO is in compliance with the Insurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~].

(f) (No change.)

(g) A delegated entity's failure to comply with applicable statutes or rules constitutes a violation of the Insurance Code Chapter 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~] by the delegating HMO.

(h) - (l) (No change.)

§11.2604. Delegation Agreements - General Requirements and Information to be Provided to HMO.

(a) An HMO that delegates to a delegated entity any function required by the Insurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~] shall execute a written agreement with that delegated entity.

(b) Written agreements shall include the following:

(1) - (11) (No change.)

(12) a provision that the delegated entity shall provide the license number of any delegated third party performing any function

that requires a license as a third party administrator under the [~~Texas~~] Insurance Code Chapter 4151 [~~Art. 21.07-6~~], or a license as a utilization review agent under the [~~Texas~~] Insurance Code Article [~~Art.~~] 21.58A, or that requires any other license under the [~~Texas~~] Insurance Code or another insurance law of this state;

(13) (No change.)

(14) a provision that any agreement in which the delegated entity directly or indirectly delegates to a delegated third party any function delegated to the delegated entity by the HMO pursuant to the [~~Texas~~] Insurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Art. 20A.18C~~], including any handling of funds, shall be in writing;

(15) a provision that upon any subsequent delegation of a function by a delegated entity to a delegated third party, the executed updated agreements shall be filed with the department and enrollees shall be notified of the change of any party performing a function for which notification of an enrollee is required by this chapter or the Insurance Code Chapters 843 and 1272 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~];

(16) - (20) (No change.)

(21) a provision relating to enrollee complaints that requires the delegated entity to ensure that upon receipt of a complaint, as defined in the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~], a copy of the complaint shall be sent to the HMO within two business days, except that in a case in which a complaint involves emergency care, as defined in the Insurance Code Chapter 843 and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~], the delegated entity shall forward the complaint immediately to the HMO, and provided that nothing in this paragraph prohibits the delegated entity from attempting to resolve a complaint

(22) - (24) (No change.)

§11.2608. Department May Order Corrective Action.

(a) (No change.)

(b) The commissioner shall order the HMO to take any action the commissioner determines is necessary to ensure that the HMO maintains compliance with the Insurance Code Chapter 1272, this chapter, and applicable insurance laws and regulations of this state that apply to HMOs [~~Act~~], including but not limited to:

(1) - (4) (No change.)

§11.2609. Reserve Requirements for Delegated Networks.

In addition to any other requirements set forth in this subchapter, HMOs that contract with delegated networks shall ensure that the delegated network complies with the [~~Texas~~] Insurance Code Chapter 1272 Subchapter D [~~Art. 20A.18D~~]. The HMO's agreement with the delegated network shall include a provision:

(1) that records related to the requirements of the [~~Texas~~] Insurance Code Chapter 1272 Subchapter D [~~Art. 20A.18D~~] shall be accessible at all times to the HMO;

(2) requiring all financial records and related information necessary to show the delegated network's compliance with the requirements of the[~~Texas~~] Insurance Code Chapter 1272 Subchapter D [~~Art. 20A.18D~~];

(3) (No change.)

(4) that records be kept providing evidence that the HMO has adequately monitored the delegated network for compliance with the requirements of the [~~Texas~~] Insurance Code Chapter 1272 Subchapter D [~~Art. 20A.18D~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604066
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

40 TAC §9.178

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §9.178, concerning the certification principles for quality assurance, in Chapter 9, Mental Retardation Services--Medicaid State Operating Agency Responsibilities, Subchapter D, Home and Community-based Services (HCS) Program.

The proposed amendment to §9.178 restores the correct text to subsection (v)(1) - (3). The correct text was inadvertently replaced with incorrect text during the recent adoption of an amendment to the section. The subsection governs an HCS Program provider's responsibilities concerning implementation of behavior management techniques involving restriction of individual rights or intrusive techniques.

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses or on businesses of any size as a result of enforcing or administering the amendment because the amendment will not place any new requirements on businesses or cause them to alter their business practices.

Public Benefit and Costs

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that correct rule language for

the HCS Program quality assurance certification principles will appear in the Texas Administrative Code.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Christie Taylor at (512) 438-4512 in DADS' Community Services Policy Development and Support Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-060, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.178. Certification Principles: Quality Assurance.

(a) - (u) (No change.)

(v) When behavior management techniques involving restriction of individual rights or intrusive techniques are used, the program provider must ensure that the implementation of such techniques includes:

(1) approval by the individual's IDT [~~must manage the individual's personal funds entrusted to the program provider~~];

(2) written consent of the individual or LAR; [~~must not commingle the individual's personal funds with the program provider's funds; and~~]

(3) written notification to the individual or LAR of the right to discontinue participation at any time; [~~must maintain a separate, detailed record of all deposits and expenditures for the individual.~~]

(4) - (11) (No change.)

(w) - (y) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604042
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: September 17, 2006
For further information, please call: (512) 438-3734

♦ ♦ ♦

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.81, §501.86

Proposed new §501.81 and amended §501.86, published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 635), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on August 7, 2006.

TRD-200604041

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

The Texas Historical Commission (THC) adopts the repeal of §17.1 and §17.3, concerning the Preservation Trust Fund Grants and the Texas Preservation Trust Fund without changes, and adopts new §17.1, concerning the Texas Preservation Trust Fund, with changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4993).

The repeal and new rule eliminate the duplication that occurred in the previous rules and the Texas Government Code §442.015. The new rule continues to establish requirements and procedures of the Texas Preservation Trust Fund and further clarifies grant awards, types of preservation grants, eligible property or project types while providing general clarification of the duties of the Texas Historical Commission's Executive Committee and Executive Director. The new rule will be republished with the revisions described below.

The THC received comments regarding the proposed new rule during the comment period. A summary of the comments and THC responses follows.

Comment:

THC received a comment from B.F. Hicks, Attorney at Law, expressing concerns regarding the organization of subsection (g) Texas Preservation Trust Fund Advisory Board, subsection (h) Texas Preservation Trust Fund staff, and subsection (i) general provisions for the advisory board. Mr. Hicks recommended that subsection (i) be incorporated under subsection (g) and subsequent relettering of following subsections.

Response:

THC acknowledges the comment and agrees with the re-organization of the subsections. The rule has been amended to reflect this change.

Comment:

THC received a comment from B.F. Hicks, Attorney at Law, recommending that curation management projects be added to subsection (m) Types of preservation grants.

Response:

THC acknowledges the comment and agrees. The rule has been amended to reflect this change.

Comment:

THC received a comment from B.F. Hicks, Attorney at Law, recommending that subsection (m)(4) education costs be more clearly defined.

Response:

THC acknowledges the comment. It is the THC's intent, however, to define these costs in procedures rather than in the rules. No change was made to the rule in response to this comment.

Comment:

THC received a comment from Lawrence Gill, Grants Administrator, Dodge Jones Foundation, regarding the organization of subsection (c) Types of Assistance and subsection (d) Allowable use of trust fund monies in relation to each other.

Response:

THC acknowledges the comment. The THC examined the organization of subsections (c) and (d) and determined that this is the best placement of these subsections within the framework of the rules. No change was made to the rule in response to this comment.

Comment:

THC receive a comment from Lawrence Gill, Grants Administrator, Dodge Jones Foundation regarding subsection (m)(6) emergency cost and recommended that limits on the funds be identified within the section.

Response:

THC acknowledges the comment. It is the THC's intent, however, to define these limits within procedures rather than in the rules. No change was made to the rule in response to this comment.

13 TAC §17.1, §17.3

The repeals are adopted under Texas Government Code, §442.005(q), which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code §442.015 is affected by the adopted repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604033

F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: August 24, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 936-4323

♦ ♦ ♦

13 TAC §17.1

The new rule is adopted under Texas Government Code, §442.005(q), which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates. Texas Government Code §442.015 is affected by the adopted new rule.

§17.1. Texas Preservation Trust Fund.

(a) Definition. The Texas preservation trust fund (hereinafter referred to as trust fund or fund) is a fund in the state treasury, created by enactment of Senate Bill 294 by the 71st Texas Legislature (1989), which amended the Texas Government Code, Chapter 442, by adding §442.015. The trust fund shall consist of transfers made to the fund, including state and federal legislative appropriations, grants, donations, proceeds of sales, loan repayments, interest income earned by the fund, and any other monies received. Funds may be received from federal, state, or local government sources, organizations, charitable trusts and foundations, private individuals, business or corporate entities, estates, or any other source.

(b) Purpose. The purpose of the Texas preservation trust fund is to serve as a source of funding for the Texas Historical Commission (Commission) to provide financial assistance to qualified applicants for the acquisition, survey, restoration, preservation, or for planning and educational activities leading to the preservation, of historic properties and associated collections in the State of Texas.

(c) Types of assistance. Commission shall provide financial assistance in the form of grants or loans. Grant recipients shall be required to follow the terms and conditions of the Preservation Trust Fund Grants and other terms and conditions imposed by Commission at the time of the grant award. Loans shall have a term not to exceed five years at an interest rate at the prime interest rate at the time the loan is made.

(d) Allowable use of trust fund monies. In all cases when no specification is made or the specified amount is less than $5,000 the proceeds and/or interest on such gifts or monies shall be unencumbered and shall accrue to the benefit of the entire fund. Money deposited to the fund for specific projects shall only be used for the projects specified provided that the specific project has received approval of the Commission, there is or will be a dedicated account within the Trust Fund for that project, and all other requirements herein are met. Money deposited to specified projects in amounts of $5,000 or greater shall retain all proceeds or interest earned for that specified project unless the donor stipulates that all proceeds or interest earned shall be unencumbered and accrue to the benefit of the entire fund.

(e) Organization. The Texas preservation trust fund shall be administered by the Commission through its Executive Committee. The trust fund advisory board, and commission staff shall provide support and input as needed.

(f) All actions of the Executive Committee are subject to ratification by the full Texas Historical Commission with the exception of emergency grants. Duties of the Executive Committee are:

(1) to approve all policies and guidelines for the administration of the fund or any of its associated boards and committees;

(2) to approve the acceptance of grants or other donations of money, property, and/or services from any source. Money received shall be deposited to the credit of the Texas preservation trust fund;

(3) to provide final approval of all trust fund allocations based on advisory board and commission staff recommendations.

(g) Texas Preservation Trust Fund Advisory Board (hereinafter referred to as advisory board) as established per Texas Government Code §442.015, which created the Texas preservation trust fund. Members of the advisory board shall serve a two-year term expiring on February 1 of each odd-numbered year. Advisory board members may be reappointed. Advisory board members will continue to serve until a new appointment is made or until reappointed. A member of the advisory board is not entitled to compensation for his service, but is entitled to reimbursement for reasonable expenses incurred while attending advisory board meetings subject to any limit provided by the General Appropriations Act. The advisory board shall meet annually in the fall of each year or at other times as determined by the commission or Executive Director. Duties of the advisory board are:

(1) to make recommendations to the Commission through the Executive Committee on all trust fund project allocations with the exception of emergency grants, as per the trust fund statute;

(2) to consult with and advise the Executive Committee and Commission staff on matters relating to more efficient utilization or enhancement of the trust fund in order to further the cause of historic preservation throughout Texas; and

(3) to provide advice and guidance in their respective area of expertise.

(4) Code of conduct--The Commission Code of Conduct shall apply to members of the advisory board.

(5) Vacancies--Any vacancy on the advisory board may be filled at any time in the same manner as the incumbent member was appointed.

(h) Texas preservation trust fund staff. The executive director of the Texas Historical Commission shall organize and supervise the staff for the Texas preservation trust fund.

(i) Eligible property or projects. To be considered eligible for grant assistance, a property or project must:

(1) be included in the National Register of Historic Places; or

(2) be designated as a Recorded Texas Historic Landmark; or

(3) be designated as a State Archeological Landmark; or

(4) be determined by the commission to qualify as an eligible property under criteria for inclusion in the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark or a State Archeological Landmark;

(5) be determined by the commission to qualify as an education grant per subsection (m)(4) of this section; or

(6) be determined by the commission to qualify as an eligible curation management project per subsection (m)(5) of this section; or

(7) be determined by the commission to qualify as an emergency grant project per subsection (m)(6) of this section; or

(8) be determined by the commission to qualify as a planning grant project per subsection (m)(3) of this section.

(j) Eligible Applicants: Any public or private entity that is the owner, manager, lessee, maintainer, potential purchaser of an eligible property, or any public or private entity whose purpose includes historic preservation is eligible for fund assistance. If applicant is not the owner of the eligible property, written approval must be submitted by the owner at time of application agreeing to follow all rules and conditions of the commission required for receipt of funds.

(k) Grant applications.

(1) Application schedules and deadlines will be set by the commission. Application forms are to be received by the commission at its offices by these deadlines.

(2) To remain eligible for potential funding, applicants must complete the grant application form and include all required attachments as stated in the grant application instruction booklet.

(3) Grant applications that are incomplete and/or received after the application deadline are ineligible for funding.

(4) Grant applications with budgets showing a high percentage of administrative costs will be considered to be less competitive than applications having little or no administrative costs.

(l) Grant awards.

(1) Grants are awarded on a competitive basis to eligible properties or projects judged by the Commission to provide the best use of limited grant funds or on an emergency basis for properties or collections deemed highly significant and/or endangered by the Commission. The Executive Director, with the approval of the Executive Committee or Commission, will have the authority to award grants on an emergency basis in accordance with subsection (m)(6) of this section.

(2) Meeting the eligibility criteria and submissions of a grant application does not guarantee award of a grant in any amount.

(3) The commission may consider an appropriate distribution of funds across geographic area, discipline, or type of preservation grant when making awards.

(m) Types of preservation grants. Preservation grants shall be awarded only for:

(1) architectural or archeological development ("preservation," "restoration," "rehabilitation," and "reconstruction," as defined by the Secretary of the Interior's Standards for The Treatment of Historic Properties, latest edition or Secretary of the Interior's Standards for Preservation Planning and Standards for Archeological Documentation, latest edition); the costs include professional fees to prepare an acceptable project proposal and supervise actual construction, the costs of construction, and related expenses approved by the commission; or

(2) architectural or archeological acquisition of absolute ownership of an eligible property (that is what is defined in subsection (i) of this section) and related costs and professional fees approved by the commission; or

(3) planning costs necessary for the preparation of a historic structure reports, historic or cultural resource reports, preservation plans, maintenance studies, resource surveys, local and regional preservation plans or surveys, and/or feasibility studies as approved by the commission; or

(4) education costs necessary for training individuals and organizations about historic resources and historic preservation techniques; or

(5) curation management cost necessary for a professional inventory and/or rehabilitation of state associated held-in-trust archeological collections (such as processing, cataloging and collections housing improvements). Held-in-trust collections refer to those State associated collections under the authority of the Texas Historical Commission that are placed in a curatorial facility for the care and management; or

(6) emergency costs necessary for the acquisition, evaluation, planning or repair of eligible property or projects as defined in subsection (i) of this section, to reduce or eliminate an immediate threat, resulting from a natural or man-made disaster. In consideration of the emergency nature, the commission may develop and adopt policy and procedures to implement this type of preservation grant with requirements separate from those in this rule.

(n) Eligible match for grant assistance. Applicants eligible to receive grant assistance shall provide a minimum of one dollar in cash match to each state dollar for approved project costs. The commission or the Executive Director upon designation by the Commission, by written policy, may approve in-kind match for projects involving highly significant and endangered properties. In exceptional circumstances and upon recommendation by the Executive Director of the Commission, the Commission may also waive the one to one cash match requirement completely, and/or approve any combination of matching cash or in-kind contribution percentages that the Commission deems appropriate.

(o) Initial grant allocations. Grants shall be allocated by vote of the Commission at large upon the recommendation of the Executive Committee at any duly noticed meeting of the commission. Reallocation of returned funds may be made by the Executive Committee of the commission upon the recommendation of the Executive Director of the commission.

(p) Final grant approval.

(1) Submission of project proposal, scope of work, or research design.

(A) For architectural projects to remain eligible for the grant allocation, an acceptable project proposal, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, latest edition, and consisting of plans/specifications, appraisal, unexecuted contract documents, and/or other material as required shall be submitted to the commission for review and approval. An acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission.

(B) For archeological projects to remain eligible for the grant allocation, modifications to the scope of work and research design as required by the commission shall be submitted to the commission for review and approval.

(C) For educational projects to remain eligible for the grant allocation, an acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission.

(D) For planning projects to remain eligible for the grant allocation, an acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission.

(2) Review and approval of project proposal, scope of work, or research design. Upon completion of the review, approved projects will be notified of the assigned project start date, as well as

the project expenses eligible for grant funding (allowable expenses) and those expenses not eligible (unallowable expenses).

(3) Commencement of project work. Project work as approved shall commence within 90 days of the assigned start date unless otherwise approved in writing by the commission. Approved project work may not begin before the assigned project start date, except for planning work required by the project proposal.

(4) Forfeiture of grant allocation. Failure to comply with the deadline for submission of an acceptable project proposal, or to meet the deadline for starting the project work, or to perform any part of the project work as approved, or to receive permission from the commission before commencing additional work may result in forfeiture of the full grant amount.

(q) Award of contract.

(1) Architectural development grant projects. All project work as approved in the project proposal shall be awarded subsequent to formal advertising for bids or other method approved in writing by the commission.

(2) Architectural planning grant projects. Contract for work described in the approved project proposal shall be awarded subsequent to interview with at least three professional firms, or other method approved in writing by the commission.

(r) Grant reimbursement procedures.

(1) Reimbursement of allowable project expenses. The only expenditures made before a start date that are reimbursable are for planning work required by the project proposal after the initial grant allocation notification.

(2) All payment of grant funds shall be strictly on a reimbursement basis with the exception of emergency grants in accordance with subsection (n)(5) of this section for which the Executive Committee or Commission may determine other payment methods. Reimbursement may be made after the competitive award of contract and submission of proof of all incurred allowable expenses in increments of at least $2,500 or at least 10% of the total project cost, whichever is lesser; or according to a schedule as determined by the Executive Director of the Commission; or at the completion of the project after an acceptable required completion report and/or planning documents have been received by the commission.

(3) Deadline for submission of requests for reimbursement. Allowable project expenses equal to two times the grant amount shall be incurred by the deadlines announced by the commission. Proof of those incurred expenses and corresponding payments shall be submitted to the commission by the deadlines announced by the commission.

(4) Forfeiture of grant. Failure to expend the full grant amount by the deadlines as announced by the commission or to submit to the commission all required material by the deadline as announced by the commission may result in forfeiture of the remaining grant amount unless otherwise approved in writing by the commission.

(s) Deed restrictions/designations/conservation easements. Acquisition and development projects shall be encumbered, prior to reimbursement of any project expenses, with a protective designation, deed restriction, conservation easement (as defined in Title 8, Natural Resources Code, Chapter 183), or other appropriate covenants in favor of the state in a format acceptable to the commission. The deed restriction shall run with the land, be enforceable by the State of Texas, and its duration will be based upon the cumulative amount of grant assistance. The terms of the deed restrictions/designations/conservation easements shall be set by the commission.

(t) Repayment penalty for resale of property within one year of acquisition. If a property acquired with a preservation grant is sold within one year of the purchase date, the project owner may be required to repay the State of Texas the amount of the grant allocation.

(u) Completion reports. Projects assisted with acquisition or development grants will be required to submit a project completion report with copies as determined by the commission, consisting of photo documentation and project summary prepared by the supervising project professional, to the commission no later than deadlines announced by the commission. The commission may require completion reports with appropriate documentation for planning, education, curation, or emergency grants. Final reimbursement, in the amount of 10% of the grant allocation may be retained until receipt of an acceptable completion report by the commission.

(v) Professional standards.

(1) Project personnel for development, curation, and planning grants. Project proposal documents for development and planning grants shall be prepared by, and development work supervised by, appropriate personnel in compliance with the following criteria except as otherwise approved by the Executive Director:

(A) History. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(B) Archeology. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(i) at least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management of archeological collections;

(ii) at least four months of supervised field and analytic experience in general North American archeology; and

(iii) demonstrated ability to carry research to completion.

(iv) In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(C) Architectural history. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(D) Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a state license to practice architecture.

(2) Project personnel for acquisition grants. The single appraisal required for acquisition grants shall be prepared by a professional appraiser.

(3) Project personnel for education and emergency projects shall be approved by the Executive Director.

(w) Performance standards. All development and planning projects must be in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, latest edition. All archeological projects must be in conformance with the Secretary of the Interior's Standards for Preservation Planning and Standards for Archeological Documentation, latest edition.

(x) Compliance with requirements for accessibility to facilities by persons with disabilities. All projects must be in compliance with or in receipt of appropriate variance from the regulations issued by the Texas Department of Licensing and Regulation, under Texas Government Code Chapter 469, Elimination of Architectural Barriers.

(y) Compliance with Uniform Grant and Contract Management Act. All projects by political subdivisions of the state must be in compliance with the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2006.

TRD-200604031
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: August 24, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 936-4323

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 36. GUN REGULATION

16 TAC §36.1

The Texas Alcoholic Beverage Commission adopts amendments to §36.1, relating to possession of firearms on premises licensed under the Alcoholic Beverage Code, with changes to the text as originally published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4824).

The possession of firearms on premises licensed to sell alcoholic beverages is regulated by statute and rule. *Alcoholic Beverage Code §§11.61(e), (f); 61.71(f), (g); 16 TAC §36.1.* The Code was amended to require the commission to amend its rule so as to allow the possession of firearms on a licensed premises during a "historical reenactment." *Texas Alcoholic Beverage Code §11.61(i).* This rule was enacted in response to that legislative command.

New subsection (d) of the rule states the conditions under which historical reenactments using firearms may be conducted on licensed premises. These conditions are calculated to allow legitimate historical reenactments while protecting the safety and welfare of others. Subsection (d)(7) was added by the commission during the adoption hearing and was not originally published in the *Texas Register.* This provision was added to insure that the relevant TABC personnel receive prior notice of reenactments, so as to more effectively enforce the provisions of this rule.

No comments were received regarding this proposal.

This amendments are adopted pursuant to Alcoholic Beverage Code §5.31 and §11.61(i), which give the commission the authority to adopt rules necessary to carry out the provisions of the Alcoholic Beverage Code and to adopt rules regarding historical reenactments on licensed premises specifically.

Cross Reference: Section 11.61(i) of the Alcoholic Beverage Code is affected by the amendments.

§36.1. Possession and Sale of Firearms on Licensed Premises.

(a) Gun Shows. A permittee/licensee may use or allow a portion of the grounds, buildings, vehicles and appurtenances of the licensed premises for the use of gun shows if the permittee/licensee:

(1) suspends all sales, complimentary offers and consumption of all alcoholic beverages during the gun show including time required for preparation or set-up and dismantling of the gun show; and

(2) operates its licensed premises at a facility regularly used for special functions, directly or indirectly, under a lease, concession or similar agreement from a governmental entity or legally formed and duly recognized civic, religious, charitable, fraternal or veterans organization.

(b) Off-Premise Retailers and Gun Sales. The holder of a retail dealer's off-premise license, a wine and beer retail dealer's off-premise permit, a wine only package store or package store permit may allow the sale or offer for sale firearms at the licensed location if:

(1) alcoholic beverages are not being displayed or sold in any area where firearms are readily accessible or can be viewed; and

(2) the firearms are secure from the general public and are only accessible by employees of the person or entity offering the firearms for sale.

(c) On-Premise Possession of Firearms. The holder of a permit or license allowing on-premise consumption of alcoholic beverages may possess firearms on the licensed premise if the firearms are:

(1) possessed by the permittee/licensee as defined in the Texas Alcoholic Beverage Code, §1.04(11) and (16); or

(2) possessed for ceremonial and/or display purposes, if such firearm is disabled from use as a firearm.

(d) Historical Reenactments. Pursuant to §11.61(i) of the Texas Alcoholic Beverage Code, a historical reenactment utilizing firearms maybe conducted on the premises of a permit or license if:

(1) the firearms are of the type, caliber, or gauge common to the era and event being reenacted;

(2) such firearms remain in the possession of members of the cast, production company, employees of the permit holder, or oth-

ers directly involved in the reenactment and are not left unattended or accessible to unauthorized persons at all times such firearms are on the licensed premises;

(3) such firearms remain unloaded at all times while on the licensed premises except that the firearms may be loaded with blank ammunition firing no projectile;

(4) such firearms shall be handled in a safe manner so as to present no threat of injury to audience members or others because of discharge or other use;

(5) persons engaged in reenactments shall maintain a minimum of 15 feet intervals between those armed with pistols and all others, and 40 feet between those armed with shotguns and all others;

(6) the permittee shall adopt safety rules to be employed during the reenactment and such rules shall be read and signed by all employees of the permit holder involved in the reenactment prior to the beginning of the event; and

(7) the permittee provides the relevant Commission District Office or outpost notice of the reenactment at least three business days before the event.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2006.

TRD-200604020
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 22, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 206-3204

♦ ♦ ♦

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER E. MISCELLANEOUS DIVISION 1. DELINQUENT LIST

16 TAC §45.121

The Texas Alcoholic Beverage Commission adopts amendments to §45.121, relating to regulation of delinquent payments by retailers to suppliers in compliance with §102.32 of the Alcoholic Beverage Code, without changes to the text as originally published in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4689).

The amendments are adopted to remove unnecessary language from the rule, to clarify obligations under the rule, and to harmonize the rule with standard business practices. For example, references to "Class A" wineries are not necessary. Requiring specification of an effective date for the delinquent list published by the commission allows industry members to better calculate their obligations under the rule. Stipulating the performance days fall on business days and the adequate mailing on performance days complies with the rule are common practice in law and business and meet the purposes of this rule.

No comments were received regarding these amendments.

The amendments are adopted under the authority of §5.31 of the Alcoholic Beverage Code, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Section 102.32 of the Alcoholic Beverage Code is affected by these amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2006.

TRD-200604025
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 23, 2006
Proposal publication date: June 9, 2006
For further information, please call: (512) 206-3204

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 623. REGISTRATION AND CERTIFICATION

22 TAC §623.8

The Board of Tax Professional Examiners adopts amendments to §623.8, concerning Qualifications for Certification as Registered Professional Appraiser (RPA), without changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3348).

The adopted amendments implement the USPAP course requirement for Class IV-appraiser.

No comments were received on the proposal.

The amendments are adopted under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2006.

TRD-200603997
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Effective date: August 21, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 305-7301

♦ ♦ ♦

22 TAC §623.18

The Board of Tax Professional Examiners adopts the repeal of §623.18, USPAP Training for all Registered Professional Appraisers, without changes to the proposal as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3349).

The adopted repeal provides a more organized Chapter 623 regarding Registration and Certification. The repealed rule is incorporated as an adopted amendment to §623.8, Qualifications for Certification as Registered Professional Appraiser (RPA) and is published elsewhere in this edition of the *Texas Register.*

No comments were received on the proposed repeal.

The repeal is adopted under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by the adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2006.

TRD-200603998
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Effective date: August 21, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 305-7301

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §5.4607

The Commissioner of Insurance adopts new §5.4607, concerning the procedures for the appointment by the Commissioner, based on demonstrated need, of temporary qualified inspectors to conduct windstorm inspections in designated catastrophe areas pursuant to the Insurance Code Article 21.49 §6A. The section is adopted without change to the proposed text as published in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4696).

The purpose of the Texas Windstorm Insurance Association (Association) is to provide windstorm and hail insurance coverage to residents and businesses in the designated catastrophe areas along the Texas coast that are unable to obtain such coverage in the voluntary market. In order to obtain or maintain windstorm and hail insurance through the Association after an insured's property has been damaged by a windstorm, a property owner must ensure that the rebuilding or repair of the property is done in conformance with the applicable windstorm building code. The purpose of the windstorm building code standards is to minimize windstorm damage to structures and to thereby minimize loss of life, property and economic losses caused by catastrophic windstorms.

This new section is necessary to establish procedures for the appointment of temporary qualified windstorm inspectors in the designated catastrophe areas, following a natural disaster that results in major windstorm and/or hail damage, to inspect damaged structures as soon as possible in order that the repairs or rebuilding may be completed in a timely manner. The Department in adopting this rule is seeking to prevent potential adverse impact to residents and business owners who are trying to rebuild or to repair their properties to meet the windstorm building code requirements following a catastrophe and to minimize negative economic consequences to the affected catastrophe areas. The rule will assist in ensuring that an adequate number of temporary qualified inspectors are available in designated catastrophe areas for windstorm inspections when the need arises. This rule will enable the Commissioner to make these inspector appointments in an expedited manner without having to adopt separate rules for each designated catastrophe area that requires additional inspectors following a major catastrophe.

To determine if repairs or rebuilding of damaged structures are in compliance with the applicable building code, a windstorm inspection is conducted before the final work is completed so that the inspector is able to observe the contractor's adherence to the applicable building code. A certificate of compliance that is evidence of insurability by the Association is issued if the rebuilding or repair is determined to be in compliance with the applicable building code; this certificate of compliance enables the building owner to obtain or retain insurance through the Association. It is necessary to have enough inspectors available in the catastrophe areas so that all damaged structures can be inspected and repaired or rebuilt as quickly as possible. Insurance Code Article 21.49 §6A provides that a windstorm inspection may only be performed by a qualified inspector who must be approved and appointed or employed by the Department to perform building inspections.

As a result of Hurricane Rita in 2005, the Department found that in the aftermath of a hurricane or other catastrophe, residents and business owners in the affected catastrophe areas faced delays in the completion of the rebuilding or repair of structures because of the overwhelming demand for windstorm inspections and the lack of qualified inspectors to meet this demand. The delay in completion of the rebuilding and repair of structures had a negative influence in the economic stability of the affected area. In the past, the Department has used various measures to increase the number of windstorm inspectors. Following Hurricane Rita, the Department temporarily assigned its inspectors from other areas of the coast to the affected areas, provided by rule for the temporary appointment of inspectors in the most needed areas, and in cooperation with the Association, provided additional inspection assistance through independent contract inspectors. Even with these measures, the Department discovered that the time required to complete the procedures to appoint temporary inspectors imposed negative influences in the catastrophe areas. There is a need for the Department to act earlier and more quickly following any future catastrophe to address the

overwhelming demand for windstorm inspections and the lack of qualified inspectors to meet this demand.

The adopted rule provides for procedures, qualifications, and requirements for the appointment of temporary qualified windstorm inspectors on an as-needed basis. Under the rule, the Commissioner may make appointments of temporary inspectors if the Commissioner, following notice and a public hearing, determines that the appointment of additional inspectors is necessary to alleviate or prevent long delays for inspections of windstorm damaged structures and that qualified inspectors are not reasonably available. The rule provides that the issuance of a temporary appointment to a qualified inspector only authorizes the appointee to inspect structures for the purposes of determining whether windstorm and hail insurance may be provided by the Association and provides that no other types of inspections by temporary appointees will be valid for purposes of the Insurance Code Article 21.49. The rule provides that temporary appointees will be subject to the provisions of the Department's current rule §5.4604 relating to the appointment of engineers as qualified inspectors, including oversight by the Department, and will also be subject to the emergency cease and desist provisions of the Insurance Code Chapter 83. This is necessary to ensure that improper inspections are halted as quickly as possible to prevent and deter approval of faulty or inadequate building, re-building, adding to, or repairing of structures, which could result in certification of structures that do not meet windstorm building code requirements and also to prevent additional harm to the property of residents and business owners.

The proposed new section was considered in a public hearing on June 21, 2006, under Docket Number 2642. No comments on the proposal were submitted either during the comment period or at the hearing.

New §5.4607(a) specifies that the purpose of the section is the establishment of the procedures for the appointment of temporary inspectors for a limited period on an as-needed basis, the qualifications of temporary inspectors, and the requirements for the appointment of persons to perform such inspections. Subsection (b) provides that temporary inspector appointments may be made only upon a determination by the Commissioner after notice and a hearing that qualified inspectors are not reasonably available in the first tier coastal counties specified in the Insurance Code Article 21.49 and/or in designated catastrophe areas as defined by Article 21.49 §3(h), and further provides that an order by the Commissioner shall specify the reasons for the temporary appointments, the designated catastrophe areas in which the temporary inspector appointments are authorized, the types of inspections the temporary inspectors are authorized to perform, the period of time for which the appointments are effective, and any other requirements necessary to properly ensure the availability of qualified inspectors as needed in the designated catastrophe areas. Subsection (c) specifies the qualifications, including necessary experience and training, of persons eligible to apply for a temporary appointment. It provides that the following persons are eligible to apply for an appointment as a temporary qualified inspector: a certified coastal inspector who has at least two years of construction, design or inspection experience on building or structures located in high wind areas; a Texas registered architect with construction, design or inspection experience on buildings or structures located in high wind areas; and any person with experience, education or training in programs at an accredited university which shall include at a minimum successful completion of at least two years of technical or university training in the field of civil or architectural engineering, the field of architecture, or the field of construction technology or construction science and at least two years of construction, design or inspection experience on buildings or structures located in high wind areas. Subsection (c) also specifies the necessary forms, affidavits and other documents needed for application. Subsection (d) defines terms used throughout the section. Subsection (e) outlines the application process for an appointment. Subsection (f) specifies the training an appointee must undergo, which is a two-hour orientation and training session provided by the Department at one of its field offices or in Austin, Texas. Subsection (g) specifies prohibited financial interests for applicants and temporary appointees. Subsection (h) requires that temporary appointees comply and utilize certain specified windstorm inspection forms. Subsection (i) provides that temporary appointees will be subject to the provisions of the Department's current §5.4604 relating to the appointment of engineers as qualified inspectors, including oversight by the Department. Subsection (j) prohibits temporary appointees from delegating any duties that are part of the authorization of their temporary appointment. Subsection (k) provides that the issuance of a temporary appointment to a qualified inspector only authorizes the appointee to inspect structures for the purposes of determining whether windstorm and hail insurance may be provided by the Association and provides that no other types of inspections by temporary appointees will be valid for purposes of the Insurance Code Article 21.49. It further provides that a temporary appointment issued under this section shall be valid only for the areas and period of time specified by the Commissioner in the order of temporary appointment; at the end of such period or upon action by the Department, the appointment will expire. Subsection (l) provides that temporary appointees will be subject to the provisions of the Department's current §5.4604, relating to the appointment of engineers as qualified inspectors, including oversight by the Department, and will also be subject to the emergency cease and desist provisions of the Insurance Code Chapter 83. Subsection (m) contains a severability clause which provides for the continuation of non-affected provisions of the rules if any provisions are declared invalid.

The Department did not receive any comments on the published proposal.

The new section is adopted pursuant to the Insurance Code Article 21.49 §6A and §36.001. Article 21.49 §6A(d) provides that a windstorm inspection may only be performed by a qualified inspector who must be approved and appointed or employed by the Department to perform building inspections. Section 6A(d) also provides that a qualified inspector includes a person determined by the Department to be qualified to perform building inspections because of training or experience and/or an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc. (all now known as the International Code Council) who has certifications as a buildings inspector and coastal construction inspector, and who also complies with other requirements specified by rule by the Commissioner. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2006.

TRD-200603995
Brenda Caldwell
Assistant General Counsel
Texas Department of Insurance
Effective date: August 21, 2006
Proposal publication date: June 9, 2006
For further information, please call: (512) 463-6327

♦ ♦ ♦

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION
SUBCHAPTER B. OMBUDSMAN PROGRAM

The Office of Injured Employee Counsel (OIEC) adopts the repeal of §276.10 and §276.11, new §276.10, and amendments to §276.12, concerning ombudsman training and education and private meetings with unrepresented injured employees. The adopted repeal of §276.10 and §276.11, new §276.10, and amendments to §276.12 are necessary to implement OIEC's ombudsman education and training program pursuant to Labor Code §404.152 as amended by House Bill (HB) 7, 79th Texas Legislature, Regular Session, 2005. The repeal of §276.10 and §276.11 is adopted without changes, and new §276.10 and the amendments to §276.12 are adopted with changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5053).

The adopted repeal of §276.10 is necessary to reduce confusion as necessary definitions are adopted in new §276.10(a). The repeal of §276.10 provides for future OIEC rulemaking initiatives, particularly in providing a single location for Chapter 276 definitions.

The adopted repeal of §276.11 and adopted new §276.10 are needed to provide an extensive ombudsman education and training program for an ombudsman's assistance to an unrepresented injured employee in the Texas Workers' Compensation System. The adopted repeal of §276.11 and new §276.10 are necessary to implement a detailed process and procedure to deliver workers' compensation education to ombudsmen, provide a system for continuing education for ombudsmen, and to assure that injured employees of Texas are provided with assistance in both informal and formal dispute resolution proceedings in the workers' compensation system.

The adopted amendments to §276.12 are necessary to complete the transfer of the ombudsmen education and training program from the former Texas Workers' Compensation Commission to OIEC. The adopted amendments to §276.12 are necessary to provide clarity to ombudsmen and injured employees in preparing for informal and formal proceedings.

Section 276.10(a) provides for definitions for the section. Subsections (b) provides for OIEC to establish and maintain an education and training program that ensures consistent, quality, and thorough training of ombudsman staff. Subsection (c) delineates between the Injured Employee Services and ombudsmen training and education responsibilities. The amendments to §276.12 establishes requirements for ombudsmen to meet privately with unrepresented injured employees for a minimum of 15 minutes prior to a proceeding. Subsection (c) has been changed from proposal to clarify that an ombudsman shall request a recess from the proceeding if an ombudsman becomes aware that the unrepresented injured employee has not met with an ombudsman for a minimum of 15 minutes prior to the proceeding. Subsection (d) establishes ombudsman procedures for when an unrepresented injured employee refuses ombudsman assistance.

The public benefits anticipated as a result of the adoption shall be a more comprehensive ombudsman education and training program. Injured employees shall benefit from an ombudsman program where ombudsmen provide assistance to injured employees in both informal and formal workers' compensation proceedings. Both injured employees and ombudsmen will benefit from the existence of regional staff attorneys who will provide legal research and advice to ombudsmen assisting injured employees.

It is anticipated that all system participants will benefit from a workers' compensation system where unrepresented injured employees receive a higher level of assistance in benefit review conferences and contested case hearings. An increased level of ombudsmen education and training is likely to result in a workers' compensation system that provides increased access to assistance, narrows the information disparity in proceedings where an injured employee's right to benefits is at stake, and provides additional information and education on the injured employee's rights and responsibilities in the workers' compensation system. Further, an increased ombudsmen education and training program is anticipated to provide ombudsmen with the skill set and resources to provide a more efficient level of assistance for Texas' injured employees.

The following is a summary of the public comment received during the comment period and OIEC's response to the comment:

Comment: One commenter suggested prescribing additional procedures in §276.12(d) regarding the meeting between an injured employee and ombudsman prior to a proceeding. The commenter requested a procedure to resume the proceeding in situations when an injured employee chose not to meet with an ombudsman prior to a proceeding, unless the ombudsman did not have sufficient material to go forward with the proceeding.

Agency Response: OIEC appreciates the commenter's suggestion but declines to make the requested change. OIEC's ombudsmen are charged with assisting unrepresented injured employees to protect their rights in the workers' compensation system pursuant to Labor Code §404.101(b)(2)(C) and §404.151(b)(4). The ombudsman's role is to assist, not represent (ie. serve as an attorney), injured employees at the administrative level of the workers' compensation system. As such, an ombudsman cannot proceed at a benefit review conference or a contested case hearing without the injured employee, who is considered the party in the proceeding, because the ombudsman is not representing the injured employee. Further, Labor Code §404.151(b)(5) requires ombudsman to meet with unrepresented claimants privately for a minimum of 15 minutes prior to any informal or formal hearing. OIEC does not have the statutory authority to either provide exceptions or waive this requirement.

The following are the names of those who submitted public comment:

For, with changes: The Boeing Company

28 TAC §276.10, §276.11

The repeal of §276.10 and §276.11 is adopted pursuant to Texas Labor Code §§404.151, 404.152, 404.154, 404.103, 404.105 and 404.006. Section 404.151 provides for the maintenance of an ombudsman program; the assistance of unrepresented injured employees and the protection of their rights in the workers' compensation system; and the meeting of an ombudsman with an unrepresented injured employee privately for a minimum of 15 minutes prior to any informal or formal hearing. Section 404.152 provides for the designation, education and training, and continuing education requirements to be an ombudsman. Section 404.152(c) provides that the public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen, which must include: education on the workers' compensation laws, rules, and appeals panel decisions; require ombudsmen undergoing training to be observed and monitored by an experienced ombudsman during daily activities; and assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings. Section 404.154 requires the office to widely disseminate information about the ombudsman program. Section 404.103 provides for the operation of the ombudsman program and requires the public counsel to assign staff attorneys, as appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings. Section 404.105 provides that the office, through the ombudsman program, may appear before the commissioner or division on behalf of an individual injured employee during an administrative dispute resolution process. Section 404.006 requires the public counsel to adopt rules to implement Chapter 404 of the Labor Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2006.

TRD-200604024
Brian M. White
Counsel for Policy Development
Office of Injured Employee Counsel
Effective date: August 23, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 804-4186

28 TAC §276.10, §276.12

The new section and amendments are adopted pursuant to Texas Labor Code §§404.151, 404.152, 404.154, 404.103, 404.105, and 404.006. Section 404.151 provides for the maintenance of an ombudsman program; the assistance of unrepresented injured employees and the protection of their rights in the workers' compensation system; and the meeting of an ombudsman with an unrepresented injured employee privately for a minimum of 15 minutes prior to any informal or formal hearing. Section 404.152 provides for the designation, education and training, and continuing education requirements to be an ombudsman. Section 404.152(c) provides that the public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen, which must include: education on the workers' compensation laws, rules, and appeals panel decisions; require ombudsmen undergoing training to be observed and monitored by an experienced ombudsman during daily activities; and assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings. Section 404.154 requires the office to widely disseminate information about the ombudsman program. Section 404.103 provides for the operation of the ombudsman program and requires the public counsel to assign staff attorneys, as appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings. Section 404.105 provides that the office, through the ombudsman program, may appear before the commissioner or division on behalf of an individual injured employee during an administrative dispute resolution process. Section 404.006 requires the public counsel to adopt rules to implement Chapter 404 of the Labor Code.

§276.10. Ombudsmen Training Program and Continuing Education.

(a) Definitions. The following words and phrases shall have the following meaning in this section unless the context clearly indicates otherwise:

(1) Adjuster's license: A workers' compensation license issued by the Texas Department of Insurance.

(2) Continuing education: A formal training program required for all ombudsmen in this state that includes continuing education for obtaining and retaining an adjuster's license.

(3) Ombudsman education and training program: The training required by the Office of Injured Employee Counsel (OIEC) to serve as an ombudsman, which results in certification upon completion.

(b) Purpose. OIEC shall establish and maintain the ombudsmen education and training program to ensure consistent, quality, and thorough training of ombudsmen staff. The ombudsmen education and training program applies to every ombudsman, regardless of hire date. The ombudsmen education and training program shall include, but is not limited to:

(1) formal classroom training conducted by OIEC staff;

(2) on-the-job training monitored by a supervising ombudsman, senior ombudsman, and regional staff attorneys;

(3) observations of ombudsmen by supervising ombudsman, senior ombudsman, and regional staff attorneys;

(4) professional skill development and legal education on workers' compensation laws, rules, advisories, and appeals panel decisions by the regional attorneys; and

(5) resource meetings with OIEC's central staff to discuss current and pending issues instrumental to providing assistance to injured employees in informal and formal proceedings.

(c) OIEC staff's responsibilities regarding education and training. OIEC staff shall maintain the knowledge and skills needed to properly assist unrepresented injured employees in the workers' compensation system.

(1) Injured Employee Services is the division within OIEC that is responsible for the overall management of the ombudsmen education and training program. Injured Employee Services' responsibilities include, but are not limited to:

(A) educating ombudsmen about the workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolu-

tion, OIEC policies and procedures, and application of such information to specific cases or factual situations;

(B) selecting team lead supervisors, training ombudsmen, and senior ombudsmen to observe, supervise, train, and provide feedback to ombudsmen on a daily basis;

(C) notifying regional staff attorneys if guidance, instruction, or legal research on technical areas is needed;

(D) establishing on-going training schedules for ombudsmen and evaluating the performance of ombudsmen's progress through the education and training program;

(E) maintaining documentation to monitor the effectiveness of the ombudsman program and coordinating with OIEC's Legal Services division to develop education and training materials to address systematic issues to enhance ombudsmen's effectiveness;

(F) examining the proficiency and competency of each ombudsman by conducting technical observations and identifying areas for professional improvement;

(G) providing targeted training to individual ombudsman for professional development and incorporating the technical observations and evaluations into the performance evaluation process;

(H) providing continuing education and training, at least annually, to ombudsmen on workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolution, OIEC policies and procedures; and

(I) assigning a staff attorney to each ombudsman who will advise the ombudsman on providing assistance to injured employees and preparing for informal and formal proceedings.

(2) An ombudsman's responsibilities shall include, but is not limited to:

(A) obtaining and maintaining a valid workers' compensation adjusters' license issued by the Texas Department of Insurance and submitting a copy of the license to OIEC's central office;

(B) completing the ombudsman education and training program;

(C) participating in OIEC conferences;

(D) completing all continuing education requirements;

(E) maintaining the technical and professional skills to perform all the duties of an ombudsman; and

(F) assisting and serving as an advocate for injured employees throughout the workers' compensation system.

§276.12. Procedures for Private Meetings with Unrepresented Injured Employees Prior to a Workers' Compensation Proceeding.

(a) An ombudsman shall meet privately with an unrepresented injured employee for a minimum of 15 minutes prior to each benefit review conference and benefit contested case hearing.

(b) The 15-minute private meeting shall include:

(1) an overview of the dispute resolution process, and

(2) a review of the injured employee's disputed issues and applicable workers' compensation laws, rules, and appeals panel decisions.

(c) The ombudsman shall request the benefit review officer or contested case hearing officer to recess the proceeding to allow for the private meeting pursuant to Labor Code §404.151(b)(5) if the ombudsman becomes aware that the unrepresented injured employee has not met with an ombudsman for a minimum of 15 minutes prior to the proceeding.

(d) If the injured employee refuses to attend the required meeting prior to a benefit review conference or a contested case hearing, the injured employee shall acknowledge such refusal in writing. If the injured employee refuses to sign the acknowledgement, the ombudsman shall request that:

(1) the injured employee receive a copy of Texas Labor Code §404.151, and

(2) the benefit review officer make a notation of the injured employee's refusal in the claim file or that the contested case hearing officer note such refusal in the hearing record.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2006.

TRD-200604023
Brian M. White
Counsel for Policy Development
Office of Injured Employee Counsel
Effective date: August 23, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 804-4186

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) and the Texas Agricultural Finance Authority proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 25, concerning the Rural Development Finance Program and Chapter 27, concerning the Preferred Lender Program, pursuant to the Texas Government Code, §2001.039. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Title 4, Part 1, Chapters 25 and 27 by the department at this time indicates that the reason for readopting without changes all sections in Chapters 25 and 27 continues to exist.

The department is accepting comments on the review of Chapters 25 and 27. Comments on the review may be submitted within 30 days following the publication of this notice in the *Texas Register* to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200604067
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: August 7, 2006

♦ ♦ ♦

Adopted Rule Review

Texas Workforce Commission

Title 40, Part 20

CHAPTER 803. SKILLS DEVELOPMENT FUND

The Texas Workforce Commission (Commission) adopts the review of Chapter 803, Skills Development Fund, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 803 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 803, Skills Development Fund.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING

The Texas Workforce Commission (Commission) adopts the review of Chapter 813, Food Stamp Employment and Training, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 813 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 813, Food Stamp Employment and Training.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

CHAPTER 815. UNEMPLOYMENT INSURANCE

The Texas Workforce Commission (Commission) adopts the review of Chapter 815, Unemployment Insurance, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 815 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 815, Unemployment Insurance.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce

Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

CHAPTER 817. CHILD LABOR

The Texas Workforce Commission (Commission) adopts the review of Chapter 817, Child Labor, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 817 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 817, Child Labor.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

CHAPTER 821. TEXAS PAYDAY RULES

The Texas Workforce Commission (Commission) adopts the review of Chapter 821, Texas Payday Rules, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 821 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 821, Texas Payday Rules.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

CHAPTER 823. GENERAL HEARINGS

The Texas Workforce Commission (Commission) adopts the review of Chapter 823, General Hearings, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 823 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 823, General Hearings.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

CHAPTER 833. COMMUNITY DEVELOPMENT INITIATIVES

The Texas Workforce Commission (Commission) adopts the review of Chapter 833, Community Development Initiatives, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 833 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 833, Community Development Initiatives.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

CHAPTER 843. JOB MATCHING SERVICES

The Texas Workforce Commission (Commission) adopts the review of Chapter 843, Job Matching Services, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 843 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 843, Job Matching Services.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

CHAPTER 845. TEXAS WORK & FAMILY CLEARINGHOUSE

The Texas Workforce Commission (Commission) adopts the review of Chapter 845, Texas Work & Family Clearinghouse, in accordance with Texas Government Code §2001.039. The proposed review was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4874).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 845 are needed, reflect current legal and policy consider-

ations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 845, Texas Work & Family Clearinghouse.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d), and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4, as well as Texas Government Code Chapter 2308.

TRD-200604088
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Filed: August 8, 2006

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 28 TAC §11.1403

NOTICE OF SPECIAL TOLL-FREE COMPLAINT [~~COMPAINT~~] NUMBER

TO MAKE A COMPLAINT ABOUT A PRIVATE PSYCHIATRIC HOSPITAL, CHEMICAL DEPENDENCY TREATMENT CENTER, OR PSYCHIATRIC OR CHEMICAL DEPENDENCY SERVICES AT A GENERAL HOSPITAL, CALL:

1-800-832-9623

Your complaint will be referred to the state agency that regulates the hospital or chemical dependency treatment center.

AVISO DE NUMERO TELEFONICO GRATIS ESPECIAL PARA QUEJAS

PARA SOMETER UNA QUEJA ACERCA DE UN HOSPITAL PSIQUIATRICO PRIVADO, DE CENTRO TRATAMIENTO PARA LA DEPENDENCIA QUIMICA, DE SERVICIOS PSIQUIATRICOS O DE DEPENDENCIA QUIMICA EN UN HOSPITAL GENERAL, LLAME A:

1-800-832-9623 [~~1-800-832-0623~~]

Su queja sera referida a la agencia estatal que regula la hospital o centro de tratamiento para la dependencia quimica.

The entire notice shall be in at least 10-point type. If the newsletter or other mailing is in larger than 10-point type, the notice shall be in the same type as the rest of the newsletter or mailing. Paragraphs 1 - 3 of the English notice and paragraphs 1 - 3 of the Spanish notice must be in boldface type. Paragraphs 1 and 2 of the English and Spanish notices must be in capital letters. A final print of the mailing shall be submitted to the HMO Division of the Texas Department of Insurance for filing within 30 days following distribution to enrollees.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Commission on Environmental Quality (TCEQ), announces the issuance of Request for Proposal (RFP) #303-3-12063, TBPC Project No. 06-024-3142, Project Name: Construction Manager at Risk Proposal for Paving and Irrigation Repair, 12100 Park 35 Circle, Austin Texas 78753. Sealed Proposals for this project will be received until 3:00 p.m., Thursday, August 24, 2006, at Bid Services, Lobby, Room 100, 1711 San Jacinto, Austin, TX 78701. See the RFP for other delivery methods. Bid documents are available on the *Electronic State Business Daily* website referenced below. Mandatory Pre-Proposal Conferences are scheduled for August 11 and August 17, 2006 at 10:00 a.m. at TCEQ Park 35 Complex Building A, Conference Room 328A and 310A, respectively. Respondents must attend at least one of the Pre-Proposal Conferences for their proposal to be accepted. Only proposals submitted on the official CMR Proposal Form available on the *Electronic State Business Daily* (ESBD) website will be accepted. A copy of the RFP may be obtained by contacting TBPC Internal Procurement, Attn: John Goodrich, Fax (512)236-6164, john.goodrich@tbpc.state.tx.us, or through the ESBD: http://esbd.tbpc.state.tx.us/ by entering Req. No. "303-3-12063" in the blank provided and clicking FIND.

TRD-200604085
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: August 8, 2006

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/14/2006 - 08/20/2006 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/14/06 - 08/20/06 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200604086
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 8, 2006

♦ ♦ ♦

Texas Education Agency

Notice of Correction: Request for Applications Concerning the Early College High School Grant

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-06-020 concerning the Early College High School Grant in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4909).

The TEA is amending the Deadline for Receipt of Applications paragraph in the *Texas Register* notice to read, "Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, August 31, 2006, to be considered for funding." This correction amends the originally-published deadline date of Thursday, August 17, 2006, and is reflective of the deadline stated in the RFA posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html.

Further Information. For clarifying information about the RFA, contact Donnell Bilsky, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200604125
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: August 9, 2006

♦ ♦ ♦

Request for Applications Concerning Texas Early Education Model (TEEM) Pre-Kindergarten School Readiness Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-06-024 from eligible entities to: (1) participate with the State Center for Early Childhood Development (SCECD) in a school readiness project aimed at implementing the SCECD's tested research-based framework to improve school readiness services provided to young children and (2) participate fully in the SCECD's development and testing of the Texas School Readiness Certification System. Eligible entities include public school districts, open-enrollment charter schools, university early childhood education programs, and public and private nonprofit organizations or agencies operating a federal Head Start Program or similar government-funded early childhood care and education program. A Head Start Program is defined as a federal program established under the Head Start Act (42 United States Code, §9831 et seq.) and its subsequent amendments. An eligible applicant must serve, in selected classrooms, a student population containing at least 75 percent low-income children, limited English proficient children, homeless children, children of military personnel, and/or children receiving special education with an individualized education plan. For the purposes of this project, low-income children are defined as those qualifying for free or reduced-price lunch. Eligibility includes shared services arrangements of eligible applicants and regional education service centers serving as fiscal agents.

Description. The purpose of this program is to work with the SCECD to improve the school readiness of at-risk preschool children. The SCECD has developed a system for use in certifying the effectiveness

of pre-kindergarten programs in preparing children for school. Applicants must be willing to: (1) expand integrating work with other local agencies to better serve children; (2) implement the Texas Early Education Model (TEEM), the SCECD's tested research-based framework, to improve school readiness services provided to young children; and (3) participate fully in the Texas School Readiness Certification System activities.

The SCECD will provide grantees support in implementing professional development and training for teaching personnel and in enabling delivery of curriculum and instruction services as well as on-going monitoring to measure children's progress.

Dates of Project. The Texas Early Education Model (TEEM) Pre-Kindergarten School Readiness Grant will be implemented during the 2006-2007 and 2007-2008 school years. Applicants should plan for a starting date of no earlier than January 1, 2007, and an ending date of no later than August 31, 2008.

Project Amount. Funding will be provided for approximately 25 projects. Award recipients may receive up to $250,000 for the 2006-2007 and 2007-2008 school years. Second year continuation funding is not anticipated; however, should additional funding become available, project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on appropriations by the Texas Legislature and budget approval by the commissioner of education.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding.

School districts involved in other grants with the Center for Improving the Readiness of Children for Learning and Education (CIRCLE) or SCECD are eligible to apply as long as there is no overlap in campuses served in previous grants. Applicants will be asked to identify classrooms that will participate in the project. Special consideration or priority will be given to applicants in areas with children of active-duty members of the military and/or that currently have Pre-kindergarten Expansion programs or approved School Readiness Integration plans.

The TEA reserves the right to select from the highest-ranking applications that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-06-024 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Mona Corbett, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://www.tea.state.tx.us/opge/disc/index.html.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, September 28, 2006, to be considered for funding.

TRD-200604124
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: August 9, 2006

Request for eGrant Applications Concerning Investment Capital Fund Grant Program: Improving Student Achievement Through Staff Development and Parent Training for Campus Deregulation and Restructuring, Cycle 16, School Years 2006-2007 and 2007-2008

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrant applications under Request for Applications (RFA) #701-06-023 from school districts and open-enrollment charter schools on behalf of an individual campus. A multi-campus school district or open-enrollment charter school may submit more than one application; however, each application must address strategies and activities for a single campus and its community. The school must have demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions at the school by entering into a partnership with school staff; parents of students at the school; community and business leaders; school district officers; and a nonprofit community-based organization that has a demonstrated capacity to train, develop, and organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards. Campuses currently participating in the 2005-2006 Investment Capital Fund Grant Program, Cycle 15 (SAS #ICFGAA07), are not eligible to participate in this project.

Description. The primary objective of this grant program is to improve student achievement through deregulation and restructuring that includes staff development and parent and community training, and may also include strategies designed to enrich or extend student learning experiences outside the regular school day. The applicant must identify local needs and provide strategies and activities designed to address those needs by meeting all of the program goals, which include training school staff, parents, and community leaders to understand academic standards; developing effective strategies to improve student performance; and organizing a large constituency of parents and community leaders that will hold the school and the school district accountable for achieving high academic standards.

Dates of Project. The Investment Capital Fund Grant, Cycle 16, will be implemented during the 2006-2007 and 2007-2008 school years. Applicants should plan for a starting date of no earlier than March 1, 2007, and an ending date of no later than August 31, 2008.

Project Amount. Funding will be provided for approximately 89 projects. Each project will receive a maximum of $50,000 for the grant period.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to TEA's eGrants. The Investment Capital Fund Grant is available only through TEA's eGrants and may not be obtained or submitted by any other means. The eGrant application will be available in eGrants beginning on or about August 18, 2006. To apply for access to eGrants, go to https://seguin.tea.state.tx.us/appsng/um/apply.aspx to apply for a new Texas Education Agency Secure Environment (TEASE) user account. Select "eGrants Production" and complete the electronic form. The request will be routed through an electronic approval process. If you already have TEASE access and you need to add access to eGrants, log into TEASE at https://seguin.tea.state.tx.us/apps/logon.asp and select "Add/Modify Application Access." Select "eGrants Production" and complete the electronic form.

Further Information. For clarifying information about the eGrant RFA, contact Vicki Logan, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

Deadline for Receipt of eGrant Applications. Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), Tuesday, September 26, 2006, to be considered for funding.

TRD-200604123
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: August 9, 2006

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 18, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 18, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Amistad Ready Mix, Inc.; DOCKET NUMBER: 2006-0414-WR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN103144929; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: rock crushing and grinding operation; RULE VIOLATED: 30 TAC §303.11(b) and Texas Water Code (the Code), §11.081, by failing to obtain written certification from the Watermaster prior to diverting water; PENALTY: $5,675; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(2) COMPANY: City of Archer City; DOCKET NUMBER: 2006-0020-PWS-E; IDENTIFIER: RN101206050; LOCATION: Archer City, Archer County, Texas; TYPE OF FACILITY: community public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by exceeding the maximum contamination level (MCL) for total trihalomethanes (TTHM); PENALTY: $330; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: City of Avinger; DOCKET NUMBER: 2006-0289-PWS-E; IDENTIFIER: RN101387033; LOCATION: Avinger, Cass County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(3)(A), (f)(3)(A)(iii), (h), and (q)(1), and THSC, §341.033(a), by failing to employ a water works operator that holds a Class D or higher license, by failing to maintain operating records, including records of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigations, by failing to maintain a supply of calcium hypochlorite on hand for use when making repairs to the water lines, and by failing to issue a boil water notification; and 30 TAC §290.44(d)(5), by failing to provide a sufficient number of valves in the distribution system so that necessary repairs can be made; PENALTY: $1,008; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2006-0401-AIR-E; IDENTIFIER: RN102536307; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 1176, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of 1,702 pounds of paraxylene; PENALTY: $4,180; ENFORCEMENT COORDINATOR: Scott Barnett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2006-0400-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum

refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 6488, Special Condition Number 2, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $49,300; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Robin Brown dba Brazos Valley Homes; DOCKET NUMBER: 2006-0545-WQ-E; IDENTIFIER: RN104942248; LOCATION: Weatherford and Benbrook; Parker and Tarrant Counties, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $800; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Cleburne Cleaners, Inc. dba Four Seasons Cleaners; DOCKET NUMBER: 2006-0795-DCL-E; IDENTIFIER: RN100710995, RN104100763, RN104100797, and RN104100854; LOCATION: Joshua, Cleburne, Alvarado, and Keene, Johnson County, Texas; TYPE OF FACILITY: dry cleaning and/or drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form for facilities 1, 2, 3, and 4; PENALTY: $3,556; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Dunky LLC dba Country Cleaners; DOCKET NUMBER: 2006-0790-DCL-E; IDENTIFIER: RN104104278; LOCATION: Kaufman, Kaufman County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration; PENALTY: $711; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Butch Hall dba East Texas Waste Management; DOCKET NUMBER: 2006-0442-IHW-E; IDENTIFIER: RN104860051; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: waste management service; RULE VIOLATED: 30 TAC §335.2(b), by failing to dispose of hazardous waste at an authorized facility; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Gasgo Markets, Inc.; DOCKET NUMBER: 2006-0799-PST-E; IDENTIFIER: RN102130846; LOCATION: Helotes, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to maintain and operate a corrosion protection system; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Gause Water Supply Corporation; DOCKET NUMBER: 2006-0681-PWS-E; IDENTIFIER: RN101264018; LOCATION: Gause, Milam County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification to the customers; PENALTY: $200; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Hilltop Hosts, Inc. dba Mountain View Lodge; DOCKET NUMBER: 2006-0247-PWS-E; IDENTIFIER: RN101651479; LOCATION: Wimberley, Hays County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(c)(5)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; and 30 TAC §290.45(c)(1)(B)(i) and THSC, §341.0315(c), by failing to meet the minimum well capacity requirement of 0.6 gallons per minute per unit; PENALTY: $480; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2006-0512-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent a nuisance; and 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Air Flexible Permit Number 16989/PSD-TX-794, Special Condition (SC) 1 and 27, Federal Operating Permit Number 01317, SC 16, and THSC, §382.085(b), by failing to comply with emissions limitations and by failing to maintain an emission rate below the allowable emission limit; PENALTY: $10,550; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Jackson County Water Control & Improvement District No. 1; DOCKET NUMBER: 2006-0461-MWD-E; IDENTIFIER: RN101609394; LOCATION: Lolita, Jackson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010911001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Monitoring and Reporting Requirements Number 7(c), and the Code, §26.121(a), by failing to comply with permitted effluent limitations for five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), and chlorine and by failing to report any effluent violation that deviates from the permitted effluent limitation by more than 40%; 30 TAC §319.7(a) and TPDES Permit Number WQ0010911001, Monitoring and Reporting Requirements Number 3(c), by failing to maintain complete records; 30 TAC §§305.125(1) and (5), 317.6(b)(1)(C), and 319.7(d), and TPDES Permit Number WQ0010911001, Operational Requirements Number 1, Monitoring and Reporting Requirements Number 1, by failing to at all times properly operate and maintain all facilities and systems of treatment and control and by failing to timely submit discharge monitoring records; and 30 TAC §319.11(c) and (d), by failing to ensure flow measurements, equipment, installation, and procedures conform to those prescribed in the Water Measurement Manual or methods that are equivalent as approved by the executive director, and by failing to analyze according to test methods specified in 40 CFR Part 136 or more recent editions of Standard Methods of the Examination of Water and Wastewater than those cited in Part 136; PENALTY: $10,144; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: Johannes Hermon Degoede dba Johannes Degoede Dairy; DOCKET NUMBER: 2006-0353-AGR-E; IDENTIFIER: RN101524049; LOCATION: Winnsboro, Wood County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121(a), by failing to prevent the discharge of wastewater associated from the operation of a concentrated animal feeding operation (CAFO); 30 TAC §321.44(a) and (b)(1) and CAFO General Permit Number TXG920000 Part III.A.5(c) and IV.B.(5), by failing to orally notify the executive director and appropriate regional office of a discharge from a CAFO and by failing to collect and analyze a grab sample of the unauthorized discharge; 30 TAC §321.38(g)(2) and CAFO General Permit Number TXG920000 Part III.A.6(f)(6), by

failing to maintain a minimum of two vertical feet between the top of the embankment and the required storage capacity; 30 TAC §321.38 and CAFO General Permit Number TXG920000 Part III.A.6; by failing to provide the required certifications; and 30 TAC §321.36(b) and CAFO General Permit Number TXG920000 Part IV.B.(2)(a), by failing to notify the appropriate TCEQ regional office at least 48 hours prior to putting into operation any new retention control structure; PENALTY: $9,720; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: K-Solv, LP; DOCKET NUMBER: 2006-0273-AIR-E; IDENTIFIER: RN100616721; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: truck loading/unloading; RULE VIOLATED: 30 TAC §§101.221(a), 115.121(a)(1), 115.122(a)(1)(C), 115.126(1)(A)(iii), and THSC, §382.085(b), by failing to properly operate abatement equipment to control volatile organic compound emissions; PENALTY: $4,320; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Latino's Ready Mix Concrete Contractors, Inc.; DOCKET NUMBER: 2006-0441-AIR-E; IDENTIFIER: RN104352836; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: ready mix concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to constructing and operating a concrete batch plant; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Eui K. Song dba Monticello Cleaners; DOCKET NUMBER: 2006-0917-DCL-E; IDENTIFIER: RN104065784; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: City of New Boston; DOCKET NUMBER: 2004-0525-MWD-E; IDENTIFIER: RN101920916; LOCATION: New Boston, Bowie County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10482-001 Effluent Limitations and Monitoring Requirement Number 1, and the Code, §26.121(a), by failing to comply with the permit limits for total ammonia nitrogen and TSS; PENALTY: $20,200; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(20) COMPANY: North Texas District Council Assemblies of God; DOCKET NUMBER: 2006-0572-MWD-E; IDENTIFIER: RN101513554; LOCATION: near Maypearl, Ellis County, Texas; TYPE OF FACILITY: municipal wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13847001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limits at Outfall 001 for BOD5, TSS, dissolved oxygen, and total chlorine residual; PENALTY: $7,128; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: David Paul Smith and Stacy Wersching dba R & J Recycling Center and Construction Services, LLC; DOCKET NUMBER: 2006-0435-MSW-E; IDENTIFIER: RN104558564, RN104751326, and RN104591938; LOCATION: Nacogdoches and Center; Nacogdoches and Shelby Counties, Texas; TYPE OF FACILITY: municipal solid waste (MSW) separation/recycling, MSW transfer station, and cardboard recycling; RULE VIOLATED: 30 TAC §330.9(f)(1), by failing to obtain authorization to store, process, remove, or dispose of MSW at an MSW Type V transfer station; and 30 TAC §328.5(b) and §330.11(e)(2), by failing to obtain authorization prior to operating a cardboard recycling facility; PENALTY: $2,440; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Razeen Enterprises, Inc. dba Cleburne Food Express; DOCKET NUMBER: 2006-0410-PST-E; IDENTIFIER: RN102381688; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct required daily and monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.248(1) and (2) and THSC, §382.085(b), by failing to make each current employee aware of the purposes and correct operating procedures of the Stage II equipment and by failing to ensure that at least one station representative receives training and instruction in the operation and maintenance of the Stage II VRS; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3) and (3)(A) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: $4,620; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: City of Santa Rosa; DOCKET NUMBER: 2005-0821-PWS-E; IDENTIFIER: RN101242170; LOCATION: Santa Rosa, Cameron County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM and haloacetic acids; PENALTY: $755; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: Texcan Consulting, Inc. dba Trainer Hale Truck Stop; DOCKET NUMBER: 2006-0225-PST-E; IDENTIFIER: RN101816932; LOCATION: near Marion, Bexar County, Texas; TYPE OF FACILITY: truck stop and convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Christina Martinez, (512) 239-0739; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: Tyler Dirty Dozen, Inc.; DOCKET NUMBER: 2006-0424-IHW-E; IDENTIFIER: RN104191853; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: pyrolysis equipment manufacturing; RULE VIOLATED: 30 TAC §335.2(b), by failing to send hazardous waste to an authorized facility; 30 TAC §335.6(c) and §335.63(a), by failing to notify the TCEQ of the generation of hazardous waste and by failing to obtain an Environmental Protection Agency identification number; and 30 TAC §335.62, by failing to perform a proper hazardous waste determination; PENALTY: $6,800; ENFORCEMENT COORDINATOR: Audra Ruble, (361)

825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(26) COMPANY: Tyler Ray De La Cerda; DOCKET NUMBER: 2006-0499-LII-E; IDENTIFIER: RN103403713; LOCATION: Richardson and Denton; Dallas and Denton Counties, Texas; TYPE OF FACILITY: licensed landscape irrigator; RULE VIOLATED: 30 TAC §344.70, by failing to comply with the City of Richardson's landscape irrigation inspection requirements, ordinances, or regulations designed to protect the public water supply; PENALTY: $210; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: U.S. Denro Steels, Inc.; DOCKET NUMBER: 2006-0456-IWD-E; IDENTIFIER: RN100217421; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: steel works; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0001332000 Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits at Outfall 201 for nickel; PENALTY: $13,860; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2006-0549-IWD-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §305.125(1), Water Quality Permit Number 00449000, Effluent Limitations and Monitoring Requirements, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS, total zinc, and oil and grease; PENALTY: $30,720; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Darryl Weishuhn; DOCKET NUMBER: 2006-0379-AIR-E; IDENTIFIER: RN104820741; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: real property; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by allegedly having caused, suffered, or allowed outdoor burning; PENALTY: $840; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200604076

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 8, 2006

♦ ♦ ♦

Notice of District Petition

Notice mailed July 31, 2006

TCEQ Internal Control No. 04242006-D02; 572-THREE, LTD. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 176 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code, Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, NewFirst National Bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 572.3256 acres located in Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Richmond, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-20, effective October 17, 2005, the City of Richmond, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $22,700,000.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200604017

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 2, 2006

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued during the period of July 27, 2006.

The following require the applicants to publish notice in the newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

BEECHWOOD WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 11423-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located on the west shoreline of Toledo Bend Reservoir, approximately 5 miles east of the intersection of State Highway 87 and Farm-to-Market Road 3315 in Sabine County, Texas.

CITY OF DAWSON has applied for a renewal of TPDES Permit No. 10026-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The facility is located approximately 0.5 mile south-southeast of Farm-to-Market Road 709 and approximately 0.5 mile east-northeast of Farm-to-Market Road 1838 in the southeast section of the City of Dawson in Navarro County, Texas.

EAGLE MOUNTAIN INTERNATIONAL CHURCH, INC. has applied for a renewal of Permit No. 12810-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 5,300 gallons per day via surface irrigation of 11.2 acres of non-public access landscape. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at the Revival Capital of the World east of Eagle Mountain Reservoir on Morris-Dido-Newark Road in Tarrant County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 11967-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located at 4900 Monroe Street, approximately 2,300 feet west of State Highway 105 and approximately 4,500 feet northwest of the intersection of State Highway 105 and Farm-to-Market Road 1131 in the community of Pine Forest in Orange County, Texas.

SPRINGTOWN INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 14054-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via non-public access drip irrigation system with a minimum area of 3.45 acres. This permit does not authorize discharge of pollutants into waters in the state. The facility and disposal site are located approximately 2 miles west-northwest of the intersection of Farm-to-Market Road 730 and Farm-to-Market Road 1542 on Farm-to-Market Road 1542 in Parker County, Texas.

TEXAS ELECTRIC COOPERATIVES, INC. which operates a telephone pole preparation and preservation plant, has applied for a renewal of TPDES Permit No. WQ0001766000, which authorizes the discharge of storm water and previously monitored effluents (non-contact cooling water, boiler blowdown, and storm water) on an intermittent and flow variable basis via Outfall 001. The facility is located on Bevil Loop Road approximately 0.6 miles south of U.S. Highway 190 and southeast of the City of Jasper, Jasper County, Texas.

CITY OF TROUP has applied for a renewal of TPDES Permit No. 10304-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 308,000 gallons per day. The facility is located approximately 0.25 mile south of the Cherokee-Smith county line and 0.38 mile east of State Highway 110 and south of the City of Troup in Cherokee County, Texas

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the Texas Commission on Environmental Quality (TCEQ) Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200604016
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 2, 2006

♦ ♦ ♦

Notice of Water Rights Application

Notices issued July 28, 2006 through July 31, 2006

APPLICATION NO. 19-2140C; Metropolitan Resources, Inc., 310 South Saint Mary's Street, Suite 2100, San Antonio, Texas 78205-3108, Applicant, has applied for an amendment to Certificate of Adjudication No. 19-2140 to delete the expiration date for the 1,837 acre-feet of water from Sherer Creek, the Medina River, and Big Sous Creek, San Antonio River Basin in Bexar County based on groundwater as an alternative source of water. The application was received on March 9, 2006. Additional information and fees for the application were received May 30, 2006 and June 14, 2006. The application was accepted for filing and declared administratively complete on July 5, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 14-1298B; The City of San Angelo (City), P.O. Box 1751, San Angelo, Texas 76902-1751, Applicant, has applied for an amendment to Certificate of Adjudication No. 14-1298 to add a downstream diversion point on the west bank of the South Concho River, Colorado River Basin and add a place of use in Tom Green County. The application was received on October 3, 2005. Additional information and fees for the application were received March 6, and 13, 2006. The application was accepted for filing and declared administratively complete on June 7, 2006. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by August 21, 2006.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on En-

vironmental Quality (TCEQ) Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200604015
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 2, 2006

♦ ♦ ♦

General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, submitted by James Naismith, Licensed State Land Surveyor, conducted May 12, 2006, locating the following shoreline boundary:

Survey in Brazoria County, a portion of the Texas Gulf Coast shoreline including the southerly shoreline of the Frederick J. Calvit Survey, Abstract No. 51.

For a copy of this survey or more information on this matter, contact Ben Thomson, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email ben.thomson@glo.state.tx.us, or fax (512) 463-5098.

TRD-200604137
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: August 9, 2006

♦ ♦ ♦

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Zaheer Amer MD PA	L05993	Houston	00	07/20/06
Throughout Tx	Brooks Well Servicing Inc DBA Key Electric Wireline Services	L06003	Alice	00	07/17/06
Throughout Tx	Diamondback Energy Service DBA Diamondback Pumping Services LP	L06016	Beaumont	00	07/26/06
Throughout Tx	Bullock Bennett & Associates LLC	L06012	Bertram	00	07/25/06
Throughout Tx	South Texas Mining Venture LLP	L06017	Corpus Christi	00	07/26/06
Throughout Tx	Frost Geosciences Inc.	L06015	San Antonio	00	07/25/06
Tomball	Arvind M Pai MD PA	L06008	Tomball	00	07/11/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	National Central Pharmacy	L04781	Abilene	23	07/21/06
Alvin	INEOS USA LLC	L01422	Alvin	64	07/18/06
Alvin	INEOS USA LLC	L01422	Alvin	65	07/26/06
Andrews	Andrews County Hospital District DBA Permian Regional Medical Center	L03158	Andrews	22	07/18/06
Arlington	Metroplex Hematology Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	77	07/18/06
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Ctr	L04910	Austin	60	07/24/06
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	19	07/21/06
Austin	Austin Positron Emission Tomography LP DBA Austin PET & Imaging Center	L05861	Austin	02	07/26/06
Bay City	Matagorda County Hospital District DBA Matagorda General Hospital	L02701	Bay City	11	07/31/06
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	103	07/19/06
Bedford	Harris Methodist Hospital – HEB Division of Radiology	L02303	Bedford	31	07/24/06
Borger	Hutchinson County Hospital District DBA Golden Plains Community Hospital	L04369	Borger	11	07/21/06
Brownsville	Christopher R Gill MD PA DBA Valley Cardiac Care Center	L05725	Brownsville	02	07/26/06
Brownsville	The Heart Institute of Brownsville	L05261	Brownsville	06	07/28/06
Carrollton	Medical Edge Healthcare Group PA DBA Heart First	L05555	Carrollton	08	07/13/06
Cleburne	Walls Regional Hospital DBA Harris Methodist Walls Regional Hospital	L02039	Cleburne	36	07/24/06
Cleveland	Cleveland Regional Medical Center LP	L02055	Cleveland	35	07/19/06
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	04	07/20/06
Dallas	Cardiology & Interventional Vascular Associates	L05412	Dallas	06	07/13/06
Dallas	Dallas Cardiology Associates PA DBA Heartplace East	L04607	Dallas	47	07/31/06
Dallas	Texas Oncology PA DBA Sammons Cancer Center	L04878	Dallas	32	07/27/06
Denton	Rocky Mountain Medical Center LP DBA North Texas Hospital	L05936	Denton	02	07/24/06
Denton	Trace Radiochemicals Inc	L05435	Denton	10	07/20/06

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Denton	Daniel W Caldwell MD PA	L05984	Denton	02	07/31/06
El Paso	The University of Texas at El Paso Radiation Safety Office	L00159	El Paso	53	07/20/06
Fort Worth	Radiology Associates	L03953	Fort Worth	40	07/21/06
Fort Worth	Texas Oncology PA	L05606	Fort Worth	11	07/21/06
Georgetown	St Davids Georgetown Hospital	L03152	Georgetown	35	07/13/06
Grapevine	Grapevine Imaging & Pain Management LLC	L05922	Grapevine	02	07/27/06
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	61	07/21/06
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	62	07/26/06
Houston	Memorial Hermann Hospital System Inc DBA Memorial Hermann Hospital	L00650	Houston	79	07/20/06
Houston	St Lukes Episcopal Health System Corporation DBA St Lukes Episcopal Health System and Texas Heart Institute	L00581	Houston	84	07/18/06
Houston	UT Physicians	L05465	Houston	04	07/20/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	115	07/18/06
Houston	Institute of Biosciences and Technology	L04681	Houston	23	07/12/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	116	07/27/06
Houston	American Diagnostic Tech LLC	L05514	Houston	28	07/25/06
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	103	07/28/06
La Porte	Cardiorad Inc	L05755	La Porte	07	07/19/06
La Porte	Oxy Vinyls LP	L02469	La Porte	19	07/26/06
Longview	Eastman Chemicals Company Texas Operations	L00301	Longview	105	07/27/06
Lubbock	IBA Molecular North America Inc DBA IBA Molecular	L05482	Lubbock	10	07/17/06
Lubbock	Isorx Texas LTD	L05284	Lubbock	17	07/26/06
McAllen	McAllen Hospital LP DBA McAllen Medical Center	L01713	McAllen	77	07/28/06
Midland	West Texas Medical Center LLC	L04729	Midland	14	07/27/06
Mineral Wells	Perry Equipment Corporation	L00330	Mineral Wells	38	07/19/06
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	21	07/20/06
Orange	Invista Inc	L05777	Orange	03	07/19/06
Orange	Lanxess Corporation	L00976	Orange	54	07/27/06
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	36	07/19/06
Pasadena	E+PET Imaging XVII LP PET Imaging of Houston Southeast	L05891	Pasadena	01	07/31/06
Port Arthur	Christus Health Southeast Texas DBA Christus Hospital St Mary	L01212	Port Arthur	91	07/24/06
Port Arthur	S K Rao MD PA	L05415	Port Arthur	10	07/18/06
Rowlett	Lake Pointe Partners LTD DBA Lake Pointe Medical Center	L04060	Rowlett	12	07/20/06
San Antonio	Alamo Heart Associates PA	L04909	San Antonio	09	07/17/06
San Antonio	UT Medicine San Antonio Nuclear Cardiology	L05410	San Antonio	07	07/21/06
San Antonio	University of Texas at San Antonio Environmental Health Safety and Risk Mgmt	L01962	San Antonio	56	07/24/06
San Antonio	Southwest Foundation for Biomedical Research	L00468	San Antonio	47	07/21/06
San Antonio	Cardiology of San Antonio PA	L05408	San Antonio	02	07/13/06
San Antonio	South Texas Blood & Tissue Center	L04381	San Antonio	11	07/25/06
Sherman	SCELA Inc DBA Cardinal Health	L05461	Sherman	08	07/17/06
Sugar Land	Sugar Land Heart Center Inc	L05921	Sugar Land	02	07/21/06

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Texas City	CHCA Mainland LP DBA Mainland Medical Center	L02577	Texas City	29	07/26/06
Texas City	BP Products North America Inc	L00254	Texas City	59	07/26/06
Throughout Tx	Team Industrial Services Inc	L00087	Alvin	148	07/19/06
Throughout Tx	Global X-ray & Testing Corp	L03663	Aransas Pass	98	07/18/06
Throughout Tx	Texas Department of Transportation Construction Division	L00197	Austin	117	07/18/06
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	45	07/25/06
Throughout Tx	CTL Thompson Texas LLC	L04900	Dallas	11	07/25/06
Throughout Tx	Alliance Geotechnical Group Inc	L05314	Dallas	10	07/27/06
Throughout Tx	Weatherford US LP	L05291	Fort Worth	13	07/27/06
Throughout Tx	Lockheed Martin Corporation Lockheed Martin Aeronautics Company	L05633	Fort Worth	04	07/27/06
Throughout Tx	QC Laboratories Inc	L05956	Houston	01	07/20/06
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	210	07/27/06
Throughout Tx	E I Du Pont De Nemours & Company	L01753	Ingleside	38	07/26/06
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	128	07/25/06
Throughout Tx	Eagle X-Ray	L03246	Mont Belvieu	90	07/31/06
Throughout Tx	Turner Specialty Services LLC	L05417	Nederland	22	07/20/06
Throughout Tx	Desert Industrial X-ray LP	L04590	Odessa	55	07/18/06
Throughout Tx	TechCorr USA LLC	L05972	Pasadena	05	07/20/06
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	66	07/25/06
Throughout Tx	Turner Specialty Services LLC	L05417	Pasadena	23	07/27/06
Throughout Tx	TechCorr USA LLC	L05972	Pasadena	06	07/27/06
Throughout Tx	Midwest Inspection Services	L03120	Perryton	93	07/17/06
Throughout Tx	Alcoa Inc	L04316	Rockdale	19	07/18/06
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	131	07/19/06
Throughout Tx	ConocoPhillips Company	L00337	Sweeny	47	07/17/06
Throughout Tx	CB&I Constructors Inc	L01902	The Woodlands	69	07/20/06
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	36	07/20/06
Tyler	Nutech Inc	L04274	Tyler	55	07/20/06
Tyler	Cardinal Health	L02987	Tyler	45	07/17/06
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	18	07/26/06
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	37	07/24/06
Victoria	Victoria of Texas LP DBA Detar Hospital North	L03575	Victoria	19	07/24/06
Wichita Falls	Clinics of North Texas LP	L00523	Wichita Falls	48	07/24/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Bonham	Attentus Bonham LP DBA Red River Regional Hospital	L03331	Bonham	30	07/20/06

RENEWAL OF LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	The Zimmerman Medical Clinic	L00244	Houston	20	07/28/06
Throughout Tx	Holt Engineering Inc	L02752	Austin	15	07/27/06
Throughout Tx	Mandes Inspection & Testing Services Inc	L05220	Houston	57	07/26/06
Throughout Tx	Texoma Engineering Services LLC	L05176	Wichita Falls	02	07/18/06
Tyler	Cardinal Health	L02987	Tyler	46	07/21/06
Waco	Waco Cardiology Associates	L05158	Waco	13	07/17/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Plant and Pipeline Inspections Inc	L05746	Rockport	09	07/24/06
Tyler	Tyler PET Imaging Institute LP	L05476	Tyler	07	07/21/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200604126
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 9, 2006

♦ ♦ ♦

Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services (department) entered into Agreed Orders with the following registrants:

Star Dental Care, P.A. (Registration Number R23182-000) of Houston. A total penalty of $2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Gerald Wayne Powell (Under L03072) of Beaumont. Six month suspension of radiographer trainer status for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Keng Chiropractic, P.A. (Registration Number R23779) of Deer Park. A total penalty of $5,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Scott D. Kerr, D.C. (Registration Number R17256) of Port Arthur. A total penalty of $2,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Larry Chancellor, dba Dental Equipment Repair and Sales (Registration Number R14958) of Dallas. A total penalty of $2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200604129
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 9, 2006

♦ ♦ ♦

Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: James B. St. Louis, D.D.S., Fort Worth, R11183, July 24, 2006; Clifford Charles Seidel, M.D., P.A., Dallas, R17774, July 24, 2006; Harrill Calhoun Chiropractic Center, P.C., Austin, R17905, July 24, 2006; Lake Joe Pool Animal Clinic, Cedar Hill, R19475, July 24, 2006; Laboratory Consultants and Marine Survey LCS-LLC, Houston, R26870, July 24, 2006; Philip A. Hicks, D.D.S., R.Ph., P.A., Houston, R27659, July 24, 2006; David M. Greenfield, D.D.S., P.A., Sugar Land, R28546, July 24, 2006.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200604128
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 9, 2006

♦ ♦ ♦

Notice of Revocation of the Radioactive Material License of Texas NDT Company

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following radioactive material license: Texas NDT Company, Pasadena, L05089, July 24, 2006.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange

Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200604127
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 9, 2006

♦ ♦ ♦

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment Number 723, Transmittal Number 06-005, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2006.

CMS approved State plan amendment TX 04-004 concerning School Health and Related Services (SHARS) on March 20, 2006. This amendment included specific language that the services and reimbursement methodology would remain in effect, as written, until August 31, 2006. The purpose of this amendment is to extend until March 31, 2007, the period during which both the current services and reimbursement methodology will remain in effect. The State is working with the Centers for Medicare and Medicaid Services to ensure that the medical services provided in the school setting to Medicaid eligible children, adhere to new federal guidance. The proposed amendment is estimated to result in no fiscal impact to state or federal funding.

Interested parties may obtain copies of the proposed amendment by contacting Barbara Davenport, Policy Assistant, by mail at Policy Development Support Unit Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1953; or by e-mail at Barbara.Davenport@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200604145
Lee Dickinson
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 9, 2006

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 728, Transmittal Number TX 06-010, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to revise the state plan to allow statewide reimbursement rate determinations to be made biennially for Mental Retardation Service Coordination services. The proposed amendment is effective September 1, 2006.

The proposed amendment will have no fiscal impact to the state or the federal budgets.

Interested parties may obtain copies of the proposed amendment by contacting Barbara Davenport, Policy Assistant, by mail at Policy Development Support, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1953; or by e-mail at Barbara.Davenport@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200604130
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 9, 2006

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 736, Transmittal Number TX 06-018, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this state plan amendment is to revise the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and its policy and reimbursement methodology for Medicaid services provided by school districts. These services are known as School Health and Related Services (SHARS). The amendment clarifies the definition of SHARS and the provider types delivering these services; establishes district specific interim rates; and implements the annual cost reporting, reconciliation, and settlement processes. The proposed amendment is effective September 1, 2006.

The proposed amendment is estimated to result in no fiscal impact to state or federal funding.

Interested parties may obtain copies of the proposed amendment by contacting Barbara Davenport, Policy Assistant, by mail at Policy Development Support Unit Medicaid/CHIP Division, Texas Health and Human Services Commission, P. O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1953; or by e-mail at Barbara.Davenport@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200604131
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 9, 2006

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment Number 743, Transmittal Number 06-025, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2006.

The Texas Department of Family and Protective Services (TDFPS) assumes financial responsibility for certain individuals in foster care. The purpose of this amendment is to revise the current age limit from 20 years of age to individuals up to 21 years of age. The proposed amendment will extend Medicaid benefits to individuals up to the age of 21 who are being cared for in TDFPS licensed family foster homes, licensed public or private child placing agency family foster homes, and private 24-hour care facilities licensed by TDFPS. The amendment also

revises language in the state plan to change agency names from the Texas Department of Protective and Regulatory Services (TDPRS) to the Texas Department of Family and Protective Services (TDFPS) and the federal program name from Aid for Families with Dependent Children (AFDC) to Temporary Assistance for Needy Families (TANF).

The fiscal impact of the proposed amendment to the State or Federal government is estimated to be minimal.

To obtain copies of the proposed amendment, interested parties may contact Susan Emery, by mail at Texas Department of Family and Protective Services, Office of Federal Funds, P. O. Box 149030, mail code E-669, Austin, Texas 78714-9030; by telephone at (512) 438-4097; by fax at (512) 438-4853; or by e-mail at susan.emery@dfps.state.tx.us. Copies of the proposal will also be made available for public review at TDFPS local offices.

TRD-200604142
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 9, 2006

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 744, Transmittal Number TX 06-026, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of this state plan amendment is to revise the reimbursement methodology for mental health rehabilitative services to allow the provision of skills training in a group format to a child or adolescent. The proposed amendment is effective September 1, 2006.

The proposed amendment is estimated to result in annual aggregate spending for state fiscal year 2007 of $168,829, of which $102,597 is federal expenditures and $66,232 is state general revenue expenditures. For state fiscal year 2008, the estimated annual aggregate spending is $168,829, with $102,479 in federal expenditures, and $66,350 in state general revenue expenditures.

Interested parties may obtain copies of the proposed amendment by contacting Barbara Davenport, Policy Assistant, by mail at Policy Development Support, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1953; or by e-mail at Barbara.Davenport@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200604133
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 9, 2006

♦ ♦ ♦

Public Notice - Selective Contracting

The Texas Health and Human Services Commission (HHSC) announces its intent to submit a new 1915(b) waiver, titled Selective Contracting, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this waiver is to allow HHSC to selectively contract with one hospital or hospital system in Cameron County to provide non-emergency inpatient hospital services to Medicaid clients seeking such services within the county. HHSC is requesting the waiver be approved for a two-year period beginning December 1, 2006.

The proposed waiver is estimated to result in cost savings of approximately $6.5 million in federal fiscal year 2007 and federal fiscal year 2008, with approximately $4.0 million cost savings in federal funds and approximately $2.5 million cost savings in state general revenue.

To obtain copies of the proposed waiver, interested parties may contact Kimberly Tucker, by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200; by phone at (512) 491-1161; by fax at (512) 491-1953; or by e-mail at kimberly.tucker@hhsc.state.tx.us.

TRD-200604144
Kathleen Cordova
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 9, 2006

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to add the Doing Business As (DBA) name of MOLINA HEALTHCARE to MOLINA HEALTHCARE OF TEXAS INC., a domestic health maintenance organization. (HMO) The home office is in Grand Prairie, Texas.

Application to change the name of INTERNATIONAL BUSINESS & MERCANTILE REASSURANCE COMPANY to OLD REPUBLIC GENERAL INSURANCE CORPORATION, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Application to change the name of BANKERS MULTIPLE LINE INSURANCE COMPANY to R. V. I. NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Stamford, Connecticut.

Application to change the name of NORTH AMERICA LIFE INSURANCE COMPANY OF TEXAS to NORTH AMERICA LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Application for incorporation to the State of Texas by VERLAN FIRE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Silver Spring, Maryland.

Application for incorporation to the State of Texas by CORE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the Texas Register publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200604138
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 9, 2006

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of SUPERIOR ADMINISTRATORS, INC., a foreign third party administrator. The home office is COSTA MESA, CALIFORNIA.

Application for incorporation in Texas of EMPLOYMENT RISK SYSTEMS, INC., a domestic third party administrator. The home office is AUSTIN, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200604132
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 9, 2006

♦ ♦ ♦

Texas Department of Licensing and Regulation

Vacancy on Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation announces a vacancy on the Air Conditioning and Refrigeration Contractors Advisory Board established by Texas Occupations Code, Chapter 1302. The pertinent rules may be found in 16 TAC §75.65. The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Texas Commission of Licensing and Regulation in adopting rules, administering and enforcing this chapter, and setting fees.

The Committee is composed of six members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of one official of a municipality with a population of more than 250,000; one official of a municipality with a population of not more than 250,000; and four full-time licensed air-conditioning and refrigeration contractors, as follows: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 250,000; one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; and one member who holds a Class B license and practices in a municipality with a population of not more than 25,000. At least one appointed advisory board member must be an air conditioning and refrigeration contractor who employs organized labor and at least two appointed members must be air conditioning and refrigeration contractors who are licensed engineers. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the advisory board. Members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year. This announcement is for the position of an official of a municipality with a population of not more than 250,000.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone: (512) 463-6599, fax: (512) 475-2874 or e-mail: jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200604069
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 7, 2006

♦ ♦ ♦

Vacancy on Medical Advisory Committee

The Texas Department of Licensing and Regulation announces a vacancy on the Medical Advisory Committee established by Texas Occupations Code, Chapter 2052. The pertinent rules may be found in 16 TAC §61.120. The purpose of the Medical Advisory Committee is to advise the Texas Commission of Licensing and Regulation on health issues for boxing event contestants including physical tests for contestants and registration requirements for ringside physicians.

The Committee is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of one trauma specialist; one ophthalmologist; one sports doctor; one neurologist; one emergency medical technician; and two public members. Members serve at the will of the Commission. This announcement is for one public member position.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone: (512) 463-6599 or 800-803-9202, fax: (512) 475-2874 or e-mail jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department's website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200604070
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 7, 2006

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 734 "Stacks of Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 734 is "STACKS OF CASH". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 734 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 734.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $25.00, $50.00, $250, $2,500 and $25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 734 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$250	TWO FTY
$2,500	25 HUND
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 734 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $200 or $250.

I. High-Tier Prize - A prize of $2,500 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (734), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 734-0000001-001.

L. Pack - A pack of "STACKS OF CASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fan folded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STACKS OF CASH" Instant Game No. 734 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "STACKS OF CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. If the player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the prize shown for that number. If the player matches any of YOUR NUMBERS play symbols to the STACKS OF CASH NUMBER play symbol, the player wins ALL 10 PRIZES INSTANTLY. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No three or more matching non-winning prize symbols on a ticket.

B. Consecutive non-winning tickets will not have identical play data, spot for spot.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. The STACKS OF CASH NUMBER play symbol will match a YOUR NUMBER play symbol only once on a ticket and only as dictated by the prize structure.

E. When the STACKS OF CASH NUMBER play symbol matches a YOUR NUMBER play symbol, no YOUR NUMBER play symbol will match either WINNING NUMBER play symbol.

F. There will never be duplicate WINNING NUMBERS play symbols on a ticket.

G. There will never be duplicate WINNING NUMBERS and STACKS OF CASH NUMBER play symbols on a ticket.

There will never be duplicate non-winning YOUR NUMBERS play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "STACKS OF CASH" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200 or $250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $200 or $250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "STACKS OF CASH" Instant Game prize of $2,500 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "STACKS OF CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "STACKS OF CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "STACKS OF CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 734. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 734 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,021,080	7.87
$4	554,760	14.49
$5	96,480	83.33
$10	104,520	76.92
$20	72,360	111.11
$50	32,361	248.45
$200	3,484	2,307.69
$250	2,144	3,750.00
$2,500	36	223,333.33
$25,000	11	730,909.09

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.26. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 734 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 734, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200604139

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 9, 2006

♦ ♦ ♦

Instant Game Number 736 "Snake Eyes Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 736 is "SNAKE EYES DOUBLER". The play style is "add up with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 736 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 736.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 736 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 736 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $100.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (736), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 736-0000001-001.

L. Pack - A pack of "SNAKE EYES DOUBLER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fan folded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SNAKE EYES DOUBLER" Instant Game No. 736 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SNAKE EYES DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If the player's total is 7 (seven) within a roll, the player wins the PRIZE shown for that roll. If the player's total is snake eyes "1+1" within a roll, the player wins DOUBLE the prize shown for that roll. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning rolls on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. The doubler "1+1" will only appear on winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SNAKE EYES DOUBLER" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify

the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SNAKE EYES DOUBLER" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SNAKE EYES DOUBLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SNAKE EYES DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SNAKE EYES DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 736. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 736 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,392,000	8.62
$2	576,000	20.83
$4	336,000	35.71
$5	96,000	125.00
$10	48,000	250.00
$20	48,000	250.00
$40	24,000	500.00
$100	2,300	5,217.39
$1,000	200	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 736 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 736, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200604140
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 9, 2006

♦ ♦ ♦

Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §402.102, relating to Bingo Advisory Committee, will be held on Tuesday, August 29, 2006, at 11:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200604021
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 2, 2006

♦ ♦ ♦

North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request for proposals appeared in the April 7, 2006, issue of the *Texas Register* (31 TexReg 3111). The selected contractor will provide services to implement a Hurst-Euless-Bedford Transit Pilot Project.

The contractor selected for this project is American Red Cross-Chisholm Trail, 1515 South Sylvania Avenue, Fort Worth, Texas 76111. The maximum amount of this contract is $100,000.

TRD-200604013
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 2, 2006

♦ ♦ ♦

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4277). The selected consultant will perform technical and professional work to assist in the Development of the North Central Texas Regional Public Transportation Coordination Plan.

The consultant selected for this project is Wilbur Smith Associates, Inc., 4925 Greenville Avenue, Suite 1300, Dallas, Texas 75206-4085. The maximum amount of this contract is $95,000.

TRD-200604014
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 2, 2006

♦ ♦ ♦

Panhandle Regional Planning Commission

Invitation for Proposals

Panhandle Regional Planning Commission (PRPC) is soliciting proposals to perform auditing services for fiscal years ending September 30, 2006, 2007, and 2008 with the option of a year-by-year extension for the two subsequent fiscal years September 30, 2009 and 2010 in accordance with the provisions of the Single Audit Act. Detailed information regarding the project is set forth in the Request for Proposal (RFP) which will be available on or after August 21, 2006, at the following location:

Cindy Boone, CPA

Finance Director

Panhandle Regional Planning Commission

P.O. Box 9257

Amarillo, Texas 79105

(806) 372-3381

The deadline for submission of proposals in response to this request will be 5:00 p.m. on Monday, September 11, 2006.

PRPC reserves the right to accept or reject any or all proposals submitted. PRPC is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractual alternatives. PRPC will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This RFP does not commit PRPC to pay any costs incurred prior to the execution of a contract. Issuance of this material in no way obligates PRPC to award a contract or pay any cost incurred in the preparation of a response. PRPC specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where PRPC feels it to be in its own best interest.

TRD-200604029
Cindy Boone
Finance Director
Panhandle Regional Planning Commission
Filed: August 4, 2006

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 2, 2006, ICG ChoiceCom, L.P. filed an application with the Public Utility Commission of Texas (Commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60103. Applicant intends to reflect a change in ownership/control.

The Application: Application of ICG ChoiceCom, L.P. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 33023.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 23, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33023.

TRD-200604072
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2006

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 2, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151-54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Everybody's Phone Company for a Service Provider Certificate of Operating Authority, Docket Number 33024 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 23, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33024.

TRD-200604073
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2006

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Bandera and Medina Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 2, 2006, to amend a certificate of convenience and necessity for a proposed transmission line in Bandera and Medina Counties, Texas.

Docket Style and Number: Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Bandera and Medina Counties, Texas. Docket Number 32934.

The Application: The application of LCRA Transmission Services Corporation (LCRA TSC) for a proposed transmission line is designated the Medina Lake-CPS Transmission Line Project. LCRA TSC stated that the proposed transmission line is a joint transmission line project that will be constructed by LCRA TSC and CPS Energy. LCRA TSC stated the project is needed to address load growth and provide additional reliability to serve the growing area. The miles of right-of-way for this project will be approximately 9 miles (preferred route). The estimated date to energize facilities is August 2009.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 18, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32934.

TRD-200604039
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2006

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Fannin and Lamar Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 1, 2006, for a certificate of convenience and necessity for a proposed transmission line in Fannin and Lamar Counties, Texas.

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Fannin and Lamar Counties, Texas. Docket Number 32791.

The Application: The application of Brazos Electric Power Cooperative, Inc. (BEPC) for a proposed transmission line is designated the Hugo to Valley South Transmission Line Project. BEPC stated that the proposed transmission line is needed to increase reliability and provide for load growth within the BEPC system. The miles of right-of-way for this project will be approximately 69.92 miles (preferred route). The estimated date to energize facilities is August 2009.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 15, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32791.

TRD-200604038
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2006

♦ ♦ ♦

Notice of Application to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) with Populations Less Than 30,000 Should Remain Regulated

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition filed on July 21, 2006, seeking to determine whether markets of incumbent local exchange carriers (ILECs) with populations of less than 30,000 in Texas should remain regulated.

Docket Style and Number: Petition of AT&T Texas to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) with Populations Less than 30,000 Should Remain Regulated. Docket Number 32977.

The Application: Southwestern Bell Telephone, LP d/b/a AT&T Texas (AT&T Texas) filed a petition to determine whether markets of incumbent local exchange carriers (ILECs) with populations of less than 30,000 in Texas should remain regulated pursuant to P.U.C. Substantive Rule §26.134. On August 1, 2006, Central Telephone Company of Texas d/b/a Embarq (Embarq) filed its original petition in this docket. Embarq's petition will be considered and decided in this proceeding along with AT&T's. The intervention deadline in this proceeding is August 25, 2006. The hearing on the merits in this docket is set for September 27, 2006.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 25, 2006 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32977.

TRD-200604040
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2006

♦ ♦ ♦

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on August 3, 2006, with the Public Utility Commission of Texas (Commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about August 14, 2006.

Docket Title and Number: Application of Kerrville Telephone Company for Approval of LRIC Study for ISDN PRI Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33035.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33035. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33035.

TRD-200604074
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2006

♦ ♦ ♦

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on August 7, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C.

Substantive Rule §26.214. The Applicant will file the LRIC study on or about August 17, 2006.

Docket Title and Number: Application of Consolidated Communications for Approval of LRIC Study for Implementation of Late Fee for Residential Customers Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33042.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments, or recommendations concerning the LRIC study referencing Docket Number 33042. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33042.

TRD-200604091
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2006

♦ ♦ ♦

Texas Department of Transportation

Request for Proposal - Professional Services - Certified Public Accountant

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for professional services pursuant to Government Code, Chapter 2254, Subchapter A. The contract will be an indefinite deliverable/work authorization based contract, and the contract term will be two years from the date of execution. The Vehicle Titles and Registration Division (division) of the department will administer the contract. The RFP will be released on August 18, 2006 and will run through September 18, 2006.

Purpose: The department is issuing this RFP to solicit proposals from qualified certified public accountants or accounting firms to provide outside audit services required by the department related to financial audits of departmental programs that are managed by outside entities. The selected firm shall conduct financial audits of all programs conducted under contract by outside entities. Upon completion of each audit, the selected firm shall produce a final audit report that includes an audit summary, comments, observations, findings, and recommendations on accounting controls, operational controls, policies and procedures, planning, budgeting and cash management considerations, and other aspects where improvements might result in savings, efficiencies, or strengthened controls. The selected firm shall include statements in each report of the firm's compliance with laws and regulations, as applicable, and adherence to generally accepted accounting principles promulgated by the American Institute of Certified Public Accountants (AICPA), the AICPA Audits of State and Local Governmental Units Audit and Accounting Guide, and the Government Accounting Standards, published by the U. S. General Accounting Office.

Eligible Applicants: Eligible applicants include, but are not limited to, certified public accountants or accounting firms that provide audit services.

Program Goal: The completion of a final audit report that includes an audit summary, comments, observations, findings, and recommendations on accounting controls, operational controls, policies and procedures, planning, budgeting and cash management considerations, and other aspects where improvements might result in savings, efficiencies, or strengthened controls for each contracting program that is audited.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the division will evaluate the proposals as to the respondent's competence, knowledge, and qualifications and as to the reasonableness of the proposed fees for the services. The criteria and review process are further described in the RFP.

Deadlines: Proposals must be received by 5:00 p.m., October 13, 2006 and be prepared according to instructions in the RFP package.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Portia R. Hausmann, Texas Department of Transportation, Vehicle Title and Registration Division, 4000 Jackson Avenue, Austin, Texas 78731, Telephone (512) 467-3973. Fax (512) 302-2040. Copies will also be available on the department's web page at **www.txdot.gov**, by entering keyword: "VTR-CPA-RFP" into the search engine.

TRD-200604141
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Filed: August 9, 2006

♦ ♦ ♦

University of Houston System

Notice of Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston System furnishes this notice of request for proposal. The University of Houston System seeks proposals from qualified consulting firms to provide advice and consultation to the System and its University Advancement offices in determining the readiness and feasibility to undertake a major fundraising effort. Interested parties are invited to express their interest and describe their capabilities on or before September 18, 2006.

The term of the contract is to be for one year period beginning on or about October 1, 2006 and ending September 30, 2007. Further technical information can be obtained from Eli D. Cipriano at (713) 743-8901. All proposals must be specific and must be responsive to the criteria set forth in this request.

GENERAL INSTRUCTIONS: Submit one original and five copies of your proposal in a sealed envelope to: University of Houston System, Attention: Eli D. Cipriano, Assistant Vice Chancellor/Assistant Vice President for the Office of Development, 400 E. Cullen, Houston, Texas 77204-2013 before 4:00 PM, September 18, 2006.

SCOPE OF WORK:

A. Campaign Readiness Assessment: The purpose of this assessment will be to determine the readiness and feasibility of the UH System community, including the Board of Regents, the UH System Chancellor/UH President and Cabinet, the UH-Clear Lake, UH-Downtown, and UH-Victoria Presidents, UH System university advancement offices, Deans, faculty and staff, the UH National Advisory Council, and other volunteers, to undertake a major fundraising effort. We hope to gain an independent opinion on the challenges of and possibilities for a campaign, how it should be structured, and who may be interested in assisting with the effort in any capacity. We expect this assessment to include interviews with external and internal stakeholders, especially potential lead donors and volunteers for campaign leadership, and that a final report will include any feedback these interviewees have on the idea of a campaign at one level or another, including guidance on spe-

cific potential dollar goal amounts. This campaign readiness assessment is authorized and supported by the UH System Chancellor/UH President as being of substantial need and necessary for determining the feasibility of such a campaign. The Chancellor/President has determined that this assessment could not be adequately performed by UH System or other government agency employees.

B. Campaign Leadership: We expect a final report to include recommendations for the best way to involve the Board of Regents, the UH National Advisory Council, and other key volunteers. This would include a recommended volunteer structure (role of the chair person, etc.) and suggestions as to possible people to fill key volunteer positions.

C. Resources/Infrastructure: Part of this assessment is to evaluate the readiness of the UH System advancement functions to support a major campaign or any other recommended development plan to achieve the goals established in the statement of need. A final report should include specific observations and recommendations in areas such as, but not limited to, major gifts staff, major gift prospect pool, prospect management system, prospect research, the annual giving program, donor/alumni database, stewardship, marketing and communications.

CRITERIA FOR EVALUATION:

A. Demonstrated ability of the proposer to fulfill current and predicted institutional needs: 35%

B. Stability and success of the proposer's business profile: 25%

C. References: 25%

D. Rates for service quoted: 15%

SCHEDULE:

September 18, 2006--Proposal due

September 25, 2006--Firm is selected

October 1, 2006--Project begins

September 30, 2007--Project completed

TERMINATION: This Request for Proposal (RFP) in no manner obligates the University of Houston System to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston System and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston System reserves the right to amend or cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200604143
Brian S. Nelson
Executive Director and Associate General Counsel
University of Houston System
Filed: August 9, 2006

♦ ♦ ♦

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Birome Water Supply Corporation, Rt. 1, Box 73, Mount Calm, Texas 76673, received April 4, 2006, application for financial assistance in the amount of $1,433,000 from the Rural Water Assistance Fund.

Greater Texoma Utility District, on behalf of the City of Van Alstyne, 5100 Airport Drive, Denison, Texas 75020, received June 1, 2006, application for financial assistance in the amount of $1,100,000 from the Drinking Water State Revolving Fund.

Greater Texoma Utility District, on behalf of the Cities of Melissa and Anna, 5100 Airport Drive, Denison, Texas 75020, received June 29, 2006, application for financial assistance in the amount of $7,300,000 from the Clean Water State Revolving Fund.

City of Round Rock, 221 East Main, Round Rock, Texas 78664, received June 1, 2006, application for financial assistance in the amount of $12,000,000 from the Drinking Water State Revolving Fund.

Town of Woodsboro, 121 Wood Avenue, P.O. Box 632, Woodsboro, Texas 78393, received April 21, 2006, application for financial assistance in the amount of $525,000 from the Drinking Water State Revolving Fund.

Salem-Elm Ridge Water Supply Corporation, 462 West FM 485, Cameron, Texas 76520, received March 24, 2006, application for financial assistance in the amount of $424,000 loan from the Rural Water Assistance Fund.

Victoria County Water Control and Improvement District No. 1, P.O. Box 667, Bloomington, Texas 77951, received June 6, 2006, application for financial assistance in the amount of $2,515,000 from the Drinking Water State Revolving Fund.

TRD-200604019
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: August 2, 2006

♦ ♦ ♦

August - December 2006 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices*.** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue date	**Rules:** **12 Noon**	**Other Documents:** **12 Noon**
34 Friday, August 25	Monday, August 14	Wednesday, August 16
35 Friday, September 1	Monday, August 21	Wednesday, August 23
36 Friday, September 8	Monday, August 28	Wednesday, August 30
37 Friday, September 15	**Friday, September 1*	Wednesday, September 6
38 Friday, September 22	Monday, September 11	Wednesday, September 13
39 Friday, September 29	Monday, September 18	Wednesday, September 20
40 Friday, October 6 *Third Quarterly Index*	Monday, September 25	Wednesday, September 27
41 Friday, October 13	Monday, October 2	Wednesday, October 4
42 Friday, October 20	Monday, October 9	Wednesday, October 11
43 Friday, October 27	Monday, October 16	Wednesday, October 18
44 Friday, November 3	Monday, October 23	Wednesday, October 25
45 Friday, November 10	Monday, October 30	Wednesday, November 1
46 Friday, November 17	Monday, November 6	Wednesday, November 8
47 Friday, November 24	Monday, November 13	Wednesday, November 15
48 Friday, December 1	*Friday, November 17	*Monday, November 20
49 Friday, December 8	Monday, November 27	Wednesday, November 29
50 Friday, December 15	Monday, December 4	Wednesday, December 6
51 Friday, December 22	Monday, December 11	Wednesday, December 13
52 Friday, December 29	Monday, December 18	Wednesday, December 20

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).